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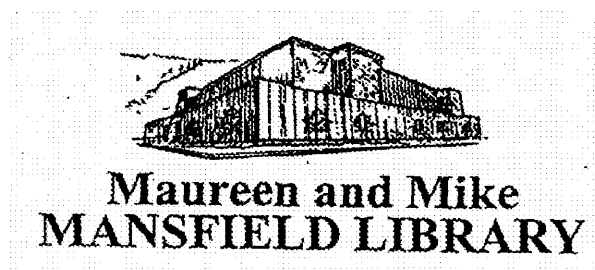
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**Land Restitution and Protected Areas  
in KwaZulu Natal, South Africa:  
Challenges to Implementation**

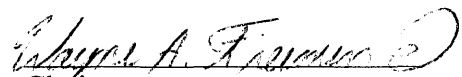
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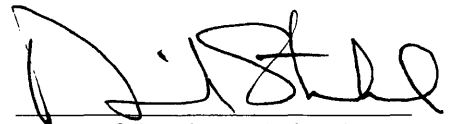
Submitted in partial fulfillment of the requirements for the degree of

Master of Science in  
Resource Conservation

Department of Society and Conservation  
The University of Montana  
May 2005

Approved by:

  
Chair

  
Dean of Graduate School

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## ABSTRACT

Ashley, Laurie, M.S. May 2005

Resource Conservation

### Land Restitution and Protected Area Conservation in KwaZulu Natal, South Africa: Challenges to Implementation

Committee Chair: Wayne A. Freimund *W.A.F.*

This study explores the challenges to implementation of land restitution in protected areas in KwaZulu-Natal, South Africa. Today, South Africa's land restitution program brings together a colonial and apartheid history of land dispossession and protected area designation with present day conservation efforts. Through the land restitution program, protected areas, or portions of these areas, may be claimed by people previously dispossessed of the land. In KwaZulu-Natal, land restitution has given claimants ownership, albeit under prescribed conditions, to protected area land. The redress of land dispossession through the restoration of land ownership to claimants of areas that are now protected means actors attempt land reform and conservation efforts on the same land. This process has proved challenging as evidenced by slow implementation.

In KwaZulu-Natal province, many protected areas have pending or settled land claims. Recent settlement agreements stipulate giving claimant groups ownership of the land through a title deed and require the land continue to be managed as a protected area in cooperation with a designated government conservation agency. This type of settlement agreement means claimants and conservation agencies face significant changes to their current practices. Protected area land claims have the potential to transform ownership patterns of conservation land and give land claimants a substantive role in conservation and tourism. However, to achieve this land ownership transformation and create a substantive role for land claimants, challenges to implementation must be understood and addressed.

This study explored challenges to protected area land restitution implementation through informal conversations and observations and interviews and meetings with stakeholders. The primary data source was in-depth interviews with thirty-nine people representing the four major stakeholders as defined by those most actively participating in the implementation process.

The study results are presented in two themes, 1) *a poor understanding of claimant protected area ownership*, and 2) *difficulty defining tangible settlement outcomes and benefits*, and describe some of the challenges to protected area land restitution. These themes demonstrate that although KwaZulu-Natal's settlement model of returning protected area land ownership has potential, it is unlikely to work every situation and in some cases alternative types of settlement may be appropriate.

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## CHAPTER ONE: INTRODUCTION

*We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity.*  
-- Constitution of the Republic of South Africa 1996, Preamble

Today, South Africa is working to bring justice to a population of people who suffered under colonial policies and Apartheid rule. Land reform is one avenue to bring justice to people historically dispossessed of their lands and occurs on land under a variety of ownership types and land uses. A particular case of land reform is the restitution of land now designated and managed as a protected area, to land claimants. Not only in South Africa but around the world both restoring land ownership to indigenous and local people and conserving the world's remaining intact ecosystems, are important agendas. Land restitution in South Africa's protected areas attempts to address these two agendas by reconciling the redress of land dispossession through land reform with the conservation of protected areas. Implementing land restitution and protected area conservation policies simultaneously presents challenges as well as opportunities for creative solutions. In KwaZulu-Natal province, numerous protected areas have pending or settled land claims. These claims have the potential to transform and redefine ownership of protected areas and give local communities a substantive role in conservation and tourism land use options determined through the claim settlement. The extent of protected area claims and their implications for land ownership patterns and conservation make understanding equitable and effective implementation important.

In South Africa, land rights and protected area interests intersect through land claims (or land restitution) in national parks, provincial parks, and protected areas with international designations, such as World Heritage status. The 1996 Constitution of the Republic of South Africa explicitly states the importance of both land equity and the conservation of protected areas

(Sections 24 and 25). The importance of these two agendas today has led to a situation of land restitution in protected areas.

Land restitution in South Africa's protected areas is guided by the South African governments' policies on land restitution, conservation, and protected area land claims. These policies essentially direct integrated conservation and development projects (ICDPs) through the protected area land restitution process. Although protected area land restitution is one type of ICDP in South Africa, there are many other conservation and development efforts in the country that include a wide range of projects and levels of participation by historically marginalized groups.

Guided by national policies, protected area land claims are settled by negotiating a settlement agreement among stakeholder groups. In KwaZulu-Natal, protected area settlements mandate that conservation management must be in place and that claimant ownership comes with land-use restrictions. In addition, the settlement requires co-management or joint management between claimants and the conservation authority, or the incorporation of claimants in agency decision making. Protected area land restitution essentially gives claimants partial or constrained ownership to their historic lands. Through restitution, claimants gain title to their land but are unable to occupy the land or use the land for activities such as cultivation. If land ownership is viewed as a bundle of various land rights, KwaZulu-Natal's protected area land restitution returns certain rights to claimants but not others. This model of restitution has the potential to meet both land restitution and protected area conservation goals but has faced numerous challenges leading to a lack of implementation of claim settlements.

## **Background**

Land is an important resource and people around the world, particularly in rural areas, continuously strive to obtain and control it for uses such as agriculture, natural resource harvesting, inhabitation, or conservation. Land rights and protected area conservation are two

compelling global issues that can be in competition. Land access and ownership, particularly in rural areas, often determines people's survival, well-being, and power. Protected areas are highly valued by conservationists for their protection of the world's remaining biodiversity. Present day land distribution in many countries is skewed with a population minority controlling much of the land base. This inequality in land distribution is a result of colonialism, discriminatory government policies, and long histories of struggle for power and control. The inequality has had profound impacts on human rights, dignity, and access to food, livelihoods, and decision-making power (Prosterman & Riedinger 1987). Inequality in land access and ownership has also contributed to degraded environments and over-exploitation of natural resources (Prosterman & Riedinger 1987). Continued land inequality may result in degraded environmental health, racial tensions, civil unrest, and escalating conflict over resources. To avert this, restoring and protecting both land rights and natural resources is important (Saruchera 2004).

Much work in the last twenty-five years has addressed the difficult situation of maintaining protected areas and the well-being of human populations living in and around protected areas (Wilshusen, *et al* 2002; Wycliff-Baird, *et al* 2001; West & Brechin 1991). Since the precedent setting establishment of Yellowstone National Park in 1872, rural people have been dispossessed of their land to create uninhabited national parks and other protected areas (Colchester 2001). Despite the importance of protected areas for environmental and social benefit, this practice has been criticized for its human right abuses and unsustainable future (Brechin, *et al* 2003, West & Brechin 1991). Today, policies for protected area establishment and management that do not address the needs of local people are coming under heavy scrutiny. Without attention to the needs of people and equity in access to and ownership of land, the intention of protected area conservation may backfire as animosity and resource degradation rise outside park boundaries.

## ***South Africa***

Democracy in South Africa after the 1994 state elections brought many changes to the country including the desire of the new government, led by the African National Congress (ANC), to redress the injustices of apartheid. An important component of this agenda is the country's land reform program. In South Africa, dispossession of land was a common colonial and apartheid practice. The current land reform program aims to correct the highly skewed racial distribution of land in South Africa. Today the government estimates that 3.5 million people and their descendants were victims of racially based land dispossessions and forced removals during the years of segregation and apartheid (DLA 2002). Even in 1996, two years after the elections, the White 12% of the population controlled 85% of the land (Marcus, et al 1996).

The establishment of protected areas in South Africa is tied to its' history of land dispossession. South African national parks and the more than 400 other South African protected areas were once largely occupied by Black Africans (de Villiers 1999). The removal of Blacks from areas today declared as protected areas was motivated to ensure racial segregation and/or uninhabited parks. In the Sabie Game Reserve (later Kruger National Park), Warden Stevenson-Hamilton earned the name 'Skukuza' meaning "he who scrapes clean," for his removal of area inhabitants (Carruthers 1995). The large number of land claims on protected areas today suggests that removals were not uncommon.

Because of South Africa's emphasis on both land restitution and protected area conservation, the Department of Land Affairs (DLA) and the Department of Environmental Affairs and Tourism (DEAT) negotiated guidelines for land restitution in protected areas in 2001. The departments agreed that in "claims involving nature conservation . . . claimants could be given title to the land they previously owned or occupied without taking physical occupation" (DLA 2002:3). Protected area land restitution is guided by the *Cabinet Memorandum for the Settlement of Restitution Claims on Protected Areas and State Forests under National Government* (DLA 2001). The memorandum is available to the public as Annexure 1 of the

Memorandum entitled *Principles that would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* (DLA 2001). The key points of these principles address transferring title, restrictive conditions on land use, the role of other area communities, and land management<sup>1</sup>.

### **Motivation for This Research**

This research was motivated by a desire to explore the implementation of protected area land restitution. Implementing either land restitution or protected area conservation alone can be difficult, implementing the two together has proved to be even more so. Land restitution in protected areas offers a unique challenge for South Africa to meet both the justice and conservation imperatives encountered as land claims are settled in protected areas. The Department of Land Affairs' White Paper states, "The primary reason for the government's land reform measures is to redress the injustices of apartheid and to alleviate the impoverishment and suffering that it caused." (DLA 1997:2.1). The goals of land reform stated in the DLA's Green Paper include justice, reconciliation, the alleviation of poverty, economic growth and stability, and sustainable use of land (DLA 1996). In protected area restitution, the DLA guidelines described above attempt to balance the goals of land reform with the conservation of protected areas. These guidelines have resulted in protected area claimants regaining constrained land ownership. The policy of returning partial land ownership rights has caused challenges to implementation when details of claimants new land rights are contested or poorly understood among stakeholders.

In his 2003 paper, Ramutsindela states, "The most formidable challenge to conservation policies has been to reconcile human needs and conservation imperatives." (Ramutsindela

---

<sup>1</sup> Further description of the Principles is given in Chapter 2 and a full copy of the document is available as Appendix 1.

2003:41). He goes on to describe how land restitution in protected areas may be a tool of reconciliation for conservation authorities and local people in South Africa. If this is the case, we need to understand how this tool may work to the advantage of both parks and communities.

South Africa's emphasis on protected area conservation and land restitution in protected areas has set up a situation where two agendas meet. Policies surrounding both land reform and protected area conservation are established and supported by the government as well as various interest groups. These policies and interest groups promote very different goals and involve a variety of stake- and rights-holders. The land restitution program is challenged to complete equitable and effective restitution while also maintaining conservation of protected areas. Equitable protected area restitution involves balancing the restoration of real land rights to claimants with achieving conservation goals and effectively implementing claim settlements such that claimants and conservation benefit.

### ***A Lack of Implementation***

Implementation of land restitution has been slow and faces numerous challenges throughout South Africa (Lahiff 2002, Tong 2002, SLSA 2001, Wynberg & Kepe 1999, Bob 1999). The first objective of this research was to situate the study specifically within the context of KwaZulu Natal and refine the research direction. In KwaZulu-Natal, although the protected area land claims were settled in 1999, 2000, and 2001, little tangible implementation had occurred. Settlement agreements give claimants a title deed to the claimed protected area but stipulate that the claimants can not occupy the land. The agreement further requires the land be managed for nature conservation with a designated conservation agency in accordance with national environmental laws. Preliminary observations and discussions with participants revealed that although claims were settled on paper, they were not settled on the ground. The lack of implementation led claimants to feel an absence of real ownership of their newly reacquired land and led other stakeholders to feel that claims weren't really settled. The lack of implementation



demonstrated that the protected area land restitution process faced challenges on the ground even after the restitution settlement was completed. The realization that little implementation had actually occurred after claim settlement refined the research direction and motivated the research to explore the challenges faced during the implementation process.

This research focuses on implementation; however, it's important to realize the protected area restitution policy design itself (described in Chapter Two) creates particular challenges through the partial ownership rights it designates. Given the constraints of the policy, there may be a need for protected area land restitution policy to evolve through the input of claimants and stakeholders working in implementation.

### ***Purpose of the Study***

The purpose of this exploratory study is to examine the challenges to implementation of protected area land restitution in KwaZulu Natal according to the model laid out in national policy and the settlement agreements. Exploring these challenges may improve protected area managers', claimant communities', and others' understanding of how to more equitably and effectively implement land restitution in protected areas through addressing challenges or rethinking the policy design. By carefully documenting these processes, as South Africa moves through a protected area restitution process, the lessons learned may be shared and applied elsewhere.

### **Thesis Organization**

Chapter II, *Background and Conceptual Foundations*, begins with a background on land reform, land claims, and protected areas. Further background about the process and context of protected area land restitution in South Africa is provided. The chapter as a whole introduces the conceptual foundations which guided the research. Chapter III, *Research Methods*, describes the qualitative methodology used in this study. These methods were chosen to correspond with the

theoretical approach described Chapter II. The chapter also provides details of the study area, sampling, data collection, and data analysis. The use of semi-structured interviews is described as the major data gathering tool. The research results are presented in chapters IV and V. Chapter IV, *Poor Understanding of Claimant Protected Area Ownership*, presents data regarding the newly reacquired claimant ownership of land now declared and managed as a protected area. The chapter explores how respondents feel about this new ownership and how protected area ownership repositions claimants relative to other interest groups. Chapter V, *Difficulty Defining Tangible Settlement Outcomes and Benefits*, explores the potential economic benefits and participation in land management that claimants might be involved through protected area land restitution. The chapter addresses the challenges in both determining and implementing claimant economic benefit and participation in management. Chapter VI synthesizes and discusses the key points of the study and provides concluding remarks. The latter includes suggestions for future research.

## **CHAPTER TWO: BACKGROUND AND CONCEPTUAL FOUNDATIONS**

This chapter incorporates both background information, relevant research, and the conceptual foundations addressing the challenges faced during the implementation of protected area land claims. The first section of the chapter highlights information from around the world on land reform while the second section focuses on the particular situation in South Africa. The first section is divided into discussions of experience in land reform: creation, conservation, and restitution in protected areas, and challenges to implementation of protected area claims. The second section is divided into discussions on land reform in South Africa: accomplishing conservation and land restitution, and challenges to implementing protected area land restitution in South Africa.

### **I. Land Reform, Land Claims, and Protected Areas Around the World**

#### **Experience in Land Reform**

In much of the world, control of land is critical for self-sufficiency, self-determination and key to wealth, status, and power (Colchester *ed.* 2001, Bruce 1993, Eckholm 1979). In addition, land ownership and land use play an important role in shaping social, political, and economic processes. However, equitable land rights today are threatened by lack of recognition of traditional tenure systems, racism and discrimination, pressure from commercial land extraction such as forestry, mining, and agriculture interests, and the effects of segregation schemes including forced removals from land and historic government-sponsored colonialism (Colchester *ed.* 2001). In addition, conservation efforts have impacted land rights through the creation of uninhabited protected areas (Geisler & de Sousa 2000). People without secure land rights often lack the resources, capacity, and political connections to effectively claim their land (Hitchcock & Osborn 2002, Colchester *ed.* 2001). Land tenure and related issues are important to governments, those dispossessed of land, and others throughout southern Africa (Palmer 1997).

Because of the importance of land in determining a population's well-being, land reform efforts in numerous countries have sought to bring about equitable land ownership patterns. Land reform, also called agrarian reform, became part of modern development efforts during post-World War II reforms in eastern Asia (Bruce 1993). Land reform is defined as "the redistribution of property or rights in land for the benefit of the landless, tenants and farm labourers" (Adams 1995).

The approach of government land reform programs vary. Adams (1995) distinguishes between four types of state intervention in the land market: land tenure reform, external inducements (market-based incentives), external controls (non-market based measures), and confirmation of title. Each of these interventions aims to secure or acquire land rights for marginalized people. However, the goals of land reform programs may also vary. In addition to securing and/or acquiring land rights for people, programs may aim to limit the size of landholdings, redistribute government land to individuals, spur agricultural growth through incentives, and reduce poverty (Adams 1995, Mazower 1992). Government-led land reform is also introduced as a strategy to gain political support among landless people (Mazower 1992).

Around the world, land reform efforts have had mixed results. Some reform has not fulfilled expectations of benefiting the "landless, tenants, and farm laborers" or met the associated social, political, and economic goals. Due to expense, corruption, lack of capacity, the strength of existing land rights, and other factors, land is often not transferred in the quantities projected and changes in the balance of power and politics do not occur (Palmer 2003, Adams & Howell 2001, Adams 1995, Bruce 1993, Marcus 1994, Platteau 1995, Warriner 1969).

Within Africa (Kenya, Zimbabwe, Mozambique) and elsewhere (Mexico, Nicaragua, Chile, Japan, Malaysia, Taiwan, India), various land reform programs can inform South Africa's

program<sup>2</sup>. In 1992, anticipating the upcoming land reform, the Surplus People Project and Community Education Resources in South Africa published a booklet in cooperation with the ANC Land Commission examining the successes and failures of land reform in Chile, India, Nicaragua, and Zimbabwe (Mazower 1992). Mazower (1992) concludes that land reform lessons for South Africa include clearly defining *who* should benefit from land reform, whether it's small farmers, rural villagers, labor tenants, etc; and that attempting to benefit a wider range of people is more difficult (Mazower 1992). Mazower (1992) notes that if beneficiaries are not clearly defined, then it is the most organized and powerful people that tend to benefit while others are left out. The pace of land reform is also important, particularly because slow implementation may allow opposition time to build strength and potentially legal support to resist reform (Mazower 1992). Resistance from certain sectors of government to the reform or a lack of cooperation among sectors to deliver services to land reform participants can be an obstacle to reform (Mazower 1992).

### ***Land Claims***

Returning land ownership to those dispossessed of land, also called land restitution or land restoration, can be a special case of land reform. Claimants can also claim land rights outside of a formal land reform program. In contrast to land redistribution, which attempts to give people rights to non-specific land, a land claims process attempts to restore land rights to people for their specific traditional lands. Land claimants are in this position after they have been removed from their lands or their rights to traditional lands have otherwise been infringed upon or denied. "Recognized in both civil and common law, restitution is the act of restoring anything to its rightful owner, of making good or giving equivalent for any loss; it requires a person who has

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<sup>2</sup> See Moyo 2000, Bookwala 1999, Marcus 1994, and Mazower 1992, and numerous publications for the Program for Land and Agrarian Studies, University of Western Cape for examinations of land reform efforts.

been unjustly enriched at the expense of another to make restitution to the other” (Black 1968: 1477). Land claims share similar goals with land reform in general: to restore land rights or give other compensation to claimants.

From Latin America to Australia to the Middle East to Africa to Canada, governments deal with land claims in a variety of ways. Claims may be ignored, bought out with financial compensation, or involve the transfer of land or management rights. In the case of the Bentian Dayak people in Indonesia, the state didn’t acknowledge Dayak land rights and use. Unwilling to communicate with the Dayak about access to and use of the forest, the state gave out logging and mining concessions on “what appeared to them to be vast tracts of empty and virgin forest” (Fried 2003). In the United States, the US Indian Claims Commission (ICC) operated from 1947 to 1978 to process land claims before turning this function over to the US Court of Claims. The ICC, however, was limited to giving financial compensation for lost land rights and no land was restored to claimants. Despite the closing of the ICC, in the US today land claims are still common. US land claims include Native American claims on protected areas exemplified by the Blackfeet’s claim on National Forest lands and the east side of Glacier National Park and World Heritage site (Burnham 2000).

Land claims, even when promoted by a country’s government, can be difficult to process and resolve. In the case of the US ICC, claims were accepted during a five year period from 1947 to 1951. During this time 600 claims were submitted and, even in 1978 when the Commission closed, claims remained unresolved (US ICC 1979). In contrast, the South Africa Commission on the Restitution of Land Rights received 63,455 claims before their 1998 deadline. (CRLR 2001 cited in Tong 2002). During the processing of land claims it can be difficult to identify claimants, acquire information to validate the claim, and negotiate settlement between claimants and other stakeholders.

## **Creation, Conservation, and Restitution of Protected Areas**

Protected area establishment has a long history throughout the world. Historically, protected areas were often created to preserve hunting grounds and scenic areas. In recent decades, protected area establishment has dramatically increased and become more focused on the preservation of the world's biodiversity. With habitat destruction and biodiversity threatened extensively around the world, many see demarking areas for curtailed human use as increasingly important (Reid & Miller 1989, Wilson 1988). Although conservation involves a variety of activities, the preservation of protected areas is central to much conservation planning. By 1998, approximately 6.8 percent of the world's land base was included in the International Union for the Conservation of Nature (IUCN) recognized protected areas limiting or excluding human use (Brechin et al 2003). Today, numerous international organizations such as the UN Environment Program, the IUCN, Conservation International, and the WorldWide Fund for Nature, support protected area establishment and management, making the protected areas approach a global and often contested endeavor.

In many cases, the creation of uninhabited protected areas around the world has meant the forced removal of area residents. Yosemite and Yellowstone (US), Madura Oya (Sri Lanka), Kahuzi-Biega (Democratic Republic of Congo), Kidepo (Uganda), Los Haitises (Dominican Republic), Myinmolekat (Burma), Rajiv (India), and numerous other protected areas were created through the expulsion of residents (Colchester 2003, Geisler 2003, Brechin *et al* 2003). In fact, many protected areas of the world share a similar history with the South African history Ellis describes here:

South Africa has 17 national parks covering three million hectares of land, as well as hundreds of smaller provincial or private conservation areas. It is a truism to say that all of this land was originally taken, with a greater or lesser degree of coercion, from the ancestors of black South Africans. (Ellis 1994:54)

### ***Protected Area Land Claims***

Land claims in protected areas occur after people have been removed from land to create an uninhabited area for conservation, when land forcefully vacated for other reasons is designated as a protected area, or when protected area inhabitants are threatened with removal. Protected area claims require the consideration of conservation as an additional goal of the land claims process. Outside of South Africa there is a history of land claims in protected areas. In Grand Canyon and Death Valley (US), Uluru-Kata Tjuta and Kakadu (Australia), Nunavut (Canada), Ngorongoro (Tanzania) and elsewhere, people have regained some rights to their land. Yet even in these cases, participants question whether the rights they receive are adequate. Difficult work remains in realizing these rights while furthering conservation goals.

Human rights advocates and others have recognized the impact of protected area creation on area residents for some time and pressured conservations to change practices of land dispossession. Protected area establishment without regard for area residents has impacted local people's livelihoods, social cohesion, and customary rights; led to conflicts between local people and conservation agencies; and negatively impacted protected area viability (Kepe et al 2002). In 1975, the IUCN passed a resolution that recommended that governments "devise means by which indigenous people may bring their land into conservation areas without relinquishing their ownership, use, or tenure rights" and "that in the creation of national parks or reserves indigenous peoples should not normally be displaced from their traditional lands. . ." (IUCN 1975). And in 1982, the World National Parks Congress passed a resolution advocating "the implementation of joint management arrangements between societies which have traditionally managed resources and protected area authorities" (IUCN 1982).

These early resolutions have had an effect on protected area establishment and management. Although people are still removed from protected areas (e.g. Korup National Park, Cameroon), many efforts today seek to incorporate local people (Brechin *et al* 2003). Protected area land claims in South Africa, Canada, and Australia have incorporated aspects of co-



management or joint management into land claims settlement (de Villiers 1999, Kepe & Wynberg 1999, Wolfe-Keddie 1995). In many cases, claims settled in protected areas include agreements to continue the conservation land use through respecting the status quo or even increasing the size of the protected area (Morrison 1997). Australia in particular is known for its success in reconciling land claims with protected area management. However, de Villiers (1999) points out that challenges still exist regarding participation of claimants in decision making, employment of claimants in the park, and the restricted title (conservation is the mandated land use and the land cannot be sold).

### **Challenges to Implementation of Protected Area Land Claims**

When conservation land is restored to claimants through a land claim, a long-term implementation phase begins. When government-recognized protected areas or other government-regulated natural resource management is involved in the claim, implementation is not a passing phase but an enduring one (Indian and Northern Affairs Canada 2003). The claim settlement begins a new relationship between the claimants (now landowners), government entities, and possibly other stakeholders.

Studies from Canada and South Africa have identified some key challenges of the implementation phase of protected area claims. Challenges include: a lack of clarity of the roles and responsibilities among stakeholders, particularly between entities focused on land restitution and entities focused on conservation; inadequate planning; the claim viewed as a threat to conservation; and conflicting ideas about land use, access, and natural resource harvesting among stakeholders (Kepe *et al* 2005, INAC 2003, de Villiers 1999, Wynberg & Kepe 1999, Ramutsindela 2002). In Australia's joint management of national parks (after a land claim), concerns have been raised that the technical nature of land management decision making has weakened the influence of claimants (de Villiers 1999). Also in Australia, de Villiers (1999) noted that challenges may arise around the different expectations of economic benefit from park

ownership and different cultural styles of management and decision making between claimants and conservation authorities. Research focused particularly on South Africa is addressed in the next section.

### ***Co-management of Protected Areas<sup>3</sup>***

Protected area land claims in South Africa usually involve some co-management arrangement between claimants and the government as a component of implementation. Thus it is worthwhile to explore the challenges identified from the extensive co-management literature outside of land claims. Co-management has been defined many times in a variety of ways (Moore 2003). A fairly comprehensive definition was adopted by the World Conservation Congress in October, 1996: “a partnership in which governmental agencies, local communities and resource users, non-governmental organizations and other stakeholders share, as appropriate to each context, the authority and responsibility for the management of a specific territory or a set of resources.” (cited in Berkes 1997:6). Co-management has been described as including “a broad spectrum of policies and institutional arrangements for participation, partnerships, and power sharing” (Castro & Nielsen 2001:235). The co-management or joint management outlined in various South African protected area land claims fits the Congress definition and exemplifies the spectrum described by Castro and Neilsen (2001).

Moore (2003) identifies themes in the co-management literature including the “right conditions for co-management.” The presence of particular conditions described below make co-management a more appropriate or feasible natural resource management choice. Under these conditions, challenges to co-management are reduced or more manageable than in other circumstances.

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<sup>3</sup> In South Africa the term “joint management” is often used rather than co-management. Joint management in South Africa may refer to a specific arrangement arrived at through a contractual National Park or a more general co-management arrangement.

Moore (2003) identifies the Borrini-Feyerabend *et al* (2000) description of the ten conditions for co-management as the most thorough description relevant for natural resource management. Borrini-Feyerabend *et al* (2000) identify eight conditions from the government viewpoint: 1) the active commitment and collaboration of several stakeholders are essential to manage the territory, area or resources at stake; 2) the access to such territory, area or resources is essential for securing the livelihood and cultural survival of one or more stakeholders; 3) local actors have historically enjoyed customary/legal rights over the territory or resources; 4) local interests are strongly affected by natural resource management decisions; 5) the decisions to be taken are complex and controversial; 6) the current natural resource management system has failed to produce the desired results and meet the needs of the local actors; 7) stakeholders are ready to collaborate and request to do so; and 8) there is ample time to negotiate.

Borrini-Feyerabend *et al* (2000) identify two more conditions from the local community viewpoint: 1) powerful non-local actors are forcing their way into the territory or extracting resources with respect to traditional customs and rules; and 2) customary practices are falling into disarray and an open-access status has ensued with resources being extracted in an unsustainable manner. The above ten conditions are applicable to South African protected area land claims and may inform the appropriateness of a co-management approach.

Moore (2003) also identifies another theme in the co-management literature as inhibiting factors or barriers to co-management. Among the barriers he identifies are:

- Lack of sufficient financial resources;
- Lack of capacity and/or readiness to carry out co-management activities among individuals;
- Lack of capacity and/or readiness to carry out co-management activities among institutions;
- Differing interests and values among stakeholders in regard to western scientific research methods and traditional knowledge;
- A “culture of distrust” that permeates relationships between the State and local resource users;
- Potential opposition by local residents who see the very existence of the protected area as depriving them of a needed potential for jobs and economic development;
- Schism between policy and practice; and

- Potential opposition by agencies or individuals unwilling to share authority with other stakeholders (Moore 2003).

The fields of community natural resource management (CNRM) and integrated conservation and development projects (ICDPs) are also related to South Africa's protected area land claims and co-management. Kellert *et al* (2000) examined implementation of five cases of CNRM and suggested that during implementation the following should be assumed:

- Interest group and stakeholder conflict will be a normative rather than exceptional condition;
- Heterogeneous interests and demographic differences should be expected;
- Extensive institution building will be necessary before CNRM can be effectively implemented;
- Significant disparities will exist between the needs of local peoples and ecosystems and species with large territorial requirements; and
- Educational efforts will be necessary, particularly the social and environmental benefits of CNRM.

The themes identified by Moore (2003) in the co-management literature and the assumptions that Kellert *et al* (2000) introduces are relevant to an analysis of protected area land claim settlement and implementation in KwaZulu-Natal. To further understand the context of protected area land restitution in South Africa, background to and an examination of the current situation follow.

## **II. Land Reform and Protected Area Land Restitution in South Africa**

Protected area land claims in South Africa occur within a compressive, government-led land reform program. South Africa's post apartheid land reform program was created to correct the highly skewed racial distribution of land in South Africa. Today the government estimates that 3.5 million people and their descendants were victims of racially based land dispossessions and forced removals during the years of segregation and apartheid (Department of Land Affairs 2002). Not only is land ownership racially skewed, but black South African land ownership is largely limited to the most marginal agricultural land. To address the inequalities in access to

land, the South African government initiated the land reform program administered by the Department of Land Affairs. This program aims to equitably distribute land, reduce poverty, secure land tenure for all, and support sustainable land use patterns (Department of Land Affairs 1997). The program includes three avenues of redress: land redistribution, tenure reform, and restitution. Each avenue aims to compensate victims of land dispossession. Land redistribution comes in the form of a grant to individuals that can be used to buy property on the open market. Tenure reform aims to secure some land rights for people living on land without ownership or right to that land. Land restitution restores land ownership to individuals, families, or communities who were disposed of land due to racially discriminatory practices.

As the ANC-led South African government developed the land reform program, policy makers had the benefit of their own commitment to justice and experiences from other countries to build on. Jensen (2002) cites four significant perspectives that influenced the land policy process: 1) ANC's commitments to removing racially skewed land ownership and to participatory democracy; 2) the influence of land rights advocates (particularly the National Land Committee and the Legal Resource Center) on policy with a focus on local ownership and democratic control in land reform implementation; 3) policy makers' awareness of the research analyzing failed land reform programs; and 4) the land reform program's development in the context of a government that was emphasizing democratization, decentralization, and participatory development.

The ANC outlined its initial vision for the South African land policy in 1996 in *Our Land: Green Paper on South African Land Policy*. The Green Paper provided the framework that the government used to approach land reform while the subsequent White Paper, released in 1997, provided further detail. The Green Paper states that the goal of the program is to "address the legacy of apartheid in relation to land distribution and to create security of tenure and certainty in relation to rights in land for all South Africans" and that "our vision is of a land policy and land reform programme that contributes to reconciliation. . . the primary reason for the

government's land reform measures is to address the injustices of apartheid and to alleviate the impoverishment and suffering that is caused" (Department of Land Affairs 1996:2).

In spite of these noble goals, South Africa's land reform is not without critics who question the program's effectiveness. These critics raise concerns that the program promises more than it can deliver, will involve further disruption in supposed beneficiaries' lives, and has set up a hierarchy of beneficiaries in opposition to the program goals of equality in land access where those in more privileged positions will be most likely to benefit (Deininger & May 2000, de Wet 1997). Resistance from white land owners, constitutional protection of property rights, and legal and procedural complexities have also been noted as impacts to effective land reform (Ramutsindela 1998, Levin & Weiner 1997). In addition, land reform monitoring has shown that poverty levels of beneficiaries remain high and participants in land reform projects lack knowledge of the management of the project and how funds have been utilized (May *et al* 2002).

### **Land Restitution**

As a component of the land reform program, land restitution in South Africa is directed by the *Restitution of Land Rights Act* (Act 22 of 1994) and the Constitution. This Act was designed particularly to counter the *Natives Land Act of 1913* and the *Group Areas Acts of 1950* and *1966*. Removals justified by these Acts occurred as late as the mid-1980s. The purpose of the program is to, "restore land and provide other restitutionary remedies to people dispossessed by racially discriminatory legislation and price, in such a way as to provide support to the vital processes of reconciliation, reconstruction, and development. Restitution is an integral part of the broader land reform program. . ." (DLA 1997:52).

Directing land restitution, the South African Constitution references the date of the 1913 Native Land Act which legally established black reserves and removals. The Constitution (Section 25.7) states, "a person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act

of Parliament, either to restitution of that property or to equitable redress.” The Restitution of Land Rights Act established the Commission on Restitution of Land Rights and the Land Claims Court to restore land ownership to individuals, families, or communities who were dispossessed of land due to racially discriminatory practices. The mission of the Commission on Restitution of Land Rights is:

- To promote equity for victims of dispossession by the State, particularly the landless and the rural poor;
- To facilitate development initiatives by bringing together all stakeholders relevant to land claims;
- To promote reconciliation through the restitution process; and
- To contribute towards an equitable redistribution of land rights (CRLR 2005).

When possible, restitution is carried out through restoring claimant ownership of the land from which they were dispossessed. However, restitution may also take the form of provision of alternative land, payment of compensation, budgetary assistance such as services and infrastructure development, priority access to state resources with regard to house and land development programs, or a combination of these. The Restitution of Land Rights Act does not specify a type of land subject to land claims but instead is concerned with all racially motivated removals in both urban and rural areas. The deadline for submitting a land claim was December 31, 1998. At that time 63,455 claims had been submitted to the Commission on the Restitution of Land Rights (CRLR 2001 cited in Tong 2002). Of these claims 28 percent were in KwaZulu-Natal, entailing a sizable task for the Regional Land Claims Commission—KwaZulu-Natal (DLA 1998 cited in Bob 1999). Throughout the country, rural claims have included more households and more complex settlement negotiations. As of May 2003 of the 2,810 rural claims in KwaZulu-Natal, only 268 had been settled (CRLR 2003 cited in Hall 2003). The restitution program was initially envisioned to be completed by the end of 2005. However the number of claims, the difficulty validating claims with little written evidence, and the limited budget and staff available (Bob 1999) among other challenges have hindered the progress. The deadline for

completing restitution was recently extended to 2007 from an earlier 2005 deadline (IAfrica News, Feb 17, 2005).

Restitution claims include removals from areas that were or were to become national parks or other conservation areas. Protected area claims are not specifically addressed in the Restitution of Land Rights Act, however, principles for guiding this process were later developed by the Department of Land Affairs in cooperation with the Department of Environment and Tourism. Protected area claim settlement has been guided by these principles since their publication in 2001 (see Appendix 1 and a description of the *Principles that Would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* below).

### ***International Direction***

Issues of land rights and protected areas are debated around the world, and today these debates are informed by numerous international agreements, conventions, and declarations. Post-apartheid South Africa is an active member of the international community and works to incorporate these agreements into legislation and policy. The international documents mentioned here have thus informed land restitution in protected areas in South Africa.

Of particular significance is the 1992 United Nations Convention on Biological Diversity, signed and ratified by 168 nations. The convention requires signatories to (among other obligations):

- (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (b) Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- (c) Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;
- (e) Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas (Article 8).



South Africa is signatory to this and other conservation-oriented conventions including: the Ramsar Convention, the World Heritage Convention, the Bonn Convention, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition, as a member state of the UN, South Africa works to implement Agenda 21 to achieve sustainable development, conservation of biodiversity, and to promote the roles of indigenous people in these activities.

The influence of these international guidelines is apparent in South Africa's approach to protected area land restitution. As described in detail below, this approach embraces both the continued conservation of protected areas and the incorporation of land claimants into the process.

### **Accomplishing Conservation and Land Restitution**

South Africa has a long history of land dispossession in the name of conservation and subsequent authoritarian conservation practices (Carruthers 1995, Ellis 1994). In spite of the racial discrimination involved in the history of protected area establishment before and during apartheid, the ANC embraced the idea of protected areas and the management of these areas for conservation. In addition to land restitution, the South African Constitution also gives direction for conservation. Section 24 of the Constitution states that:

Everyone has the right—

- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
  - (i) prevent pollution and ecological degradation;
  - (ii) promote conservation; and
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Protected area conservation is additionally guided by a range of policies and legislation including the Protected Areas Act 2004, the Biodiversity Act 2004, the National Forests Act 1998, the Marine Living Resources Act 1998, and the National Environmental Management Act

1998.<sup>4</sup> In addition South Africa's 1997 *White Paper on the Conservation and Sustainable Use of Biological Diversity* gives direction for achieving and involving communities in conservation planning and management. The paper also guides South Africa's approach to implementing the Convention on Biological Diversity and other international agreements described above. The maintenance and even expansion of controversially established protected areas after democracy in South Africa shows the environmental and economic value the present government places on these areas.<sup>5</sup>

Thus, land restitution in protected areas offers a unique challenge for South Africa. The challenge is to meet both the justice and conservation imperatives encountered as land claims are settled in protected areas. The Department of Land Affairs' *White Paper* states, "The primary reason for the government's land reform measures is to redress the injustices of apartheid and to alleviate the impoverishment and suffering that it caused." (DLA 1997:2.5.1). The goals of land reform stated in the DLA's *Green Paper* include justice, reconciliation, the alleviation of poverty, economic growth and stability, and sustainable use of land (DLA 1996). In an attempt to reconcile these goals the DLA and Department of Environment and Tourism negotiated guidelines for protected area restitution in 2001 resulting in the document, *Principles that would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* (DLA 2001).

### ***Guidelines for Protected Area Land Restitution***<sup>6</sup>

The key points of *Principles that would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* address transferring title, restrictive conditions, other area communities, management, and more.

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<sup>4</sup> See [www.environment.gov.za](http://www.environment.gov.za) for a comprehensive list.

<sup>5</sup> Further information on KwaZulu-Natal's provincial conservation authorities is presented in the stakeholders section of Chapter 3.

<sup>6</sup> See Appendix 1 for entire document.

Regarding the transfer of title, the document states that title to conservation land can be transferred to claimants with restrictive conditions. Restrictive conditions include that the land be managed for conservation in perpetuity and claimants will not inhabit the land nor undertake development incompatible with conservation (i.e. grazing or cultivation). In addition, the land will be managed in accordance with relevant national and provincial environmental legislation. However, if restricted title is given to claimants, the claim should be structured to provide economic benefits to claimants and to encourage their meaningful participation in management. Also, in certain situations a portion of the claimed protected area could be excised for non-conservation use by claimants.

Regarding other communities in the area, the document asserts that claimants have the first right to benefit from the claimed land. However, the needs of other local groups and all stakeholders associated with the claimed area will be considered in the settlement. The document states that, “the broader public will benefit from any agreements reached . . . keeping with the modern trend to recognize that a national park’s human neighbors should share in the management of and the benefits derived from that park rather than being excluded from it” (section 4.3). Regarding the economic benefits that should be available to claimants with restricted title, the document says that, “the structuring of economic benefits should be done in such a way which gives due weight to the claimants’ rights as well as that of other stakeholders” (section 4.5).

Regarding management, the document says that claimants could manage protected areas through an established legal entity. However, if claimants are not prepared to take over management functions then “provision can be made for joint management and assistance can be granted to claimants to acquire the necessary management skills in order to take over after a specific period” (section 6.2). The document specifies that in a joint management scenario, a

thorough co-management agreement should be written detailing claimant participation, consultation, and empowerment in land management and development.<sup>7</sup>

These principles lay out a way forward for protected area land claims that is quite distinct from other types of land claims. Outside of unique cases, protected area restitution does not meet claimants' need for agricultural land or land for inhabitation. Marcus *et al* (1996) studied the demand for land in South Africa. They found that country-wide, the most articulated land need was for residential use, reflecting the apartheid legacy of restricted land access. However, among rural people the most widespread need was for arable fields and gardens (Marcus *et al* 1996). In one survey, sixty-eight percent of survey respondents reported a need for farmland, ranging from nearly 80% in KwaZulu/Natal to 40% in the Northern Cape (LAPC 1997:A1-2 in Bookwalter 1999). While protected area restitution aims to deliver other benefits to claimants, residential and agricultural land is not one of them. In contrast to land claims in which claimants receive land for occupation or agriculture, protected area restitution offers conservation management, tourism development, and sustainable harvest defined by government policy as land use options for the new owners.

### **Challenges to Implementing Protected Area Land Restitution in South Africa**

In South Africa, implementation begins following the signing of a settlement agreement by participating stakeholders. The settlement agreement is a legal document written by the Regional Land Claims Commission (RLCC) after the pre-settlement negotiations to guide the implementation process.<sup>8</sup> Initially the Commission on the Restitution of Land Rights envisioned that the settlement agreement would be the end of the RLCC's involvement in claims— after

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<sup>7</sup> Details of the settlement agreements pertaining to this research are presented in Chapter 3.

<sup>8</sup> Although all stakeholders approve the settlement, the role of the state in protected area claims where it is both landowner and arbiter of the land claim has raised questions about how willingly claimants have entered into agreements when there was very little choice around the basis of the settlement terms (Lahiff 2002).

settlement, the remaining stakeholders would complete implementation as outlined in the agreement. However, it soon became clear that facilitation of stakeholders and post-settlement support for claimants was needed during the implementation phase and the RLCCs added an implementation arm. Although this arm is now in place, the RLCCs are constrained by limited staff, high staff turnover, and dependence on outside service providers (Hall 2003). And although the Commission can offer some implementation support, the goal of the Commission on the Restitution of Land Rights is to complete their work by the end of 2007, leaving the remaining stakeholders to carry on. After the RLCC is gone, the settlement agreement and any supporting documents will continue to guide implementation.

In an overview of land reform and conservation areas in South Africa, Wynberg and Kepe (1999) identify the implementation phase as the most challenging and important phase of restitution and the stage in which South Africa has the least experience. Protected area claims settled before and after the publication of the *Principles* document outlined above generally follow these guidelines. Thus, most protected area land claims in South Africa have resulted in some type of joint land management between claimants and conservation agencies (Kepe *et al* 2005).

In the implementation phase stakeholders are involved in land use decision making and the realization of claimants' new, yet restricted, land rights. Most protected area restitution research in South Africa has focused on the Khomani San and Mier<sup>9</sup>, the Makuleke<sup>10</sup>, and Dwesa-Cwebe<sup>11</sup>. Some challenges such as overlapping claims, disputes among claimants and Traditional Authorities, and dispersed claimant groups are not unique to protected area restitution. Other challenges involving conservation management, joint management, and conservation agencies are particular to protected area claims. In the literature, challenges to implementation fall generally

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<sup>9</sup> For detailed information see SAHRC 2004 and Isaacson 2001.

<sup>10</sup> For detailed information see Ramutsidela 2002, Reid 2001, Steenkamp & Grossman 2001, Steenkamp & Uhr 2000, and de Villiers 1999.

into a few categories: management capacity, cooperation of stakeholders, funding and benefits, and the conservation imperative. Challenges around the concept of ownership as it relates to claimants' new position as land owners under restricted conditions is also relevant. Any of these challenges can prove frustrating for stakeholders and result in conflict.

### ***Management Capacity***

Capacity to implement restitution and manage land is commonly cited as a challenge. Wynberg & Kepe (1999:62) say that "the lack of capacity and resources to effect implementation is a perennial problem." Resource constraints in the land reform program, dwindling funding and staff for conservation agencies, and limited technical and financial management capacity in the claimant group complicates implementation (SA Human Rights Commission 2004, Wynberg & Kepe 1999). Conservation agencies may lack capacity and skills to engage with claimants (Mohamed 2002, Turner & Meer 2001, p. 40). And claimant groups rarely have skills and experience in conservation management or tourism (Turner & Meer 2001). A lack of expertise among the claimant group could be offset by capacity-building or outsider and NGO involvement; however, claimants may lack this outside assistance and external support (Reid 2001, Turner & Meer 2001).

### ***Cooperation of Stakeholders***

Securing the cooperation of various stakeholders to plan, manage, and make decisions can be challenging for a variety of reasons. Capacity is one challenge to cooperation; other challenges include unequal distributions of power among stakeholders, stakeholder resistance to cooperation, an adversarial relationship history between claimants and conservation, disputes over land use, and establishing effective institutions for joint decision making.

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<sup>11</sup> For detailed information see Kepe 2004 and Palmer et al (eds) 2001.

Kepe *et al* (2005:11) note that, “While [claimants] may have won their land rights on paper, in practice local communities are often at the mercy of conservation agencies who tend to pursue conservation goals. . . at all costs.” This unequal power balance led Isaacs & Mohamed (2000) to conclude that joint management arrangements between the rural poor and conservation agencies in South Africa can easily lead to “usurpation of local needs and priorities by outside goals” and community coercion rather than participation. Power relations can also be obscured when other stakeholders claim to be working in the interests of the claimants but are actually pursuing strictly conservation agendas (Steenkamp & Grossman 2001, Steenkamp & Uhr 2000).

In some cases one or more stakeholders resist cooperation. Regarding the Khomani San claim and the accompanying !Ae!Hai Kalahari Heritage Park Agreement, there are allegations by human rights groups and others that SANP is not fulfilling the agreement and that the claimants continue to be denied access to their land (SAHRC 2004). Stakeholder resistance may stem from an adversarial relationship history between conservationists and claimants. Even when there is a desire for cooperation this relationship history can prove challenging. South Africa has a long history of racially discriminatory restrictions on hunting, fishing, and land access in addition to a history of forced removals. The distrust and animosity built up over decades can make the current implementation of joint management challenging (Kepe *et al* 2005, Mohamed 2002, Reid 2001).

Disputes over land use occur between and among stakeholder groups. Conservation agencies have a primary goal of conservation of natural resources; claimants usually don’t share that primary goal (Mohamed 2001). The claimant group itself has internal divisions of gender, generation, class, sometimes geographic location, and in certain cases even different cultural history (Khomani San Meir claim). This diversity can lead to conflict over even the limited land use choices available (SAHRC 2004, Hall 2003).

Co-management arrangements and cooperation of stakeholders necessitate the establishment of effective joint management institutions with clear and equitable objectives and

responsibilities (Mohamed 2002, Wynberg & Kepe 1999). Creating these institutions can be challenging as it requires stakeholder time, commitment, and dedication. At Makuleke, the joint management institution (the joint management board) is in place, however, management responsibilities are largely divided with SANP completing conservation management and the Makuleke are responsible for tourism development. This dichotomy could pose challenges to future stakeholder cooperation (Reid 2001).

### ***Funding and Benefits***

In South Africa, land claimants are commonly called beneficiaries and it is understood that people will benefit through land restitution. Protected area claims complicate the notion of being a beneficiary. In most of the world, conservation doesn't pay for itself, but rather is subsidized by governments or other entities. The cost of managing a protected area is almost always more than the revenue that tourism and other conservation-compatible activities are able to generate. Although some areas, notably the Greater St. Lucia Wetlands Park, are striving to "make conservation pay," it remains to be seen if conservation compatible activities can raise enough money to pay for conservation management and provide revenue to land claimants.

Both ensuring that funding for management and maintenance of the protected area is available and managing claimants' expectations of financial gain from the protected area are challenges during implementation (Kepe *et al* 2005, Turner *et al* 2002, Reid 2001, and Wynberg & Kepe 1999). Studies show that in protected area claims "ecotourism is touted as one—and often the only—strategy for ensuring that local people will benefit from a protected area over which they gained rights" (Kepe *et al* 2005:12). However, realizing these benefits for claimants continues to prove challenging. Lahiff (2002) commented that the sustainability of protected area restitution rests on its ability to deliver some benefits to claimants. Unfortunately, during settlement negotiations claimants may be led to believe that tourism is the best land use. Frustrations rise when there are difficulties realizing the benefits from tourism (Kepe *et al* 2005).



## ***Ownership***

Protected area land restoration gives claimants ownership to their historic lands but with restricted land rights. Ownership in the context of restricted land rights and the requirement of protected area conservation is more complex than unrestricted land ownership. Lachapelle and McCool (2005) define ownership through three characteristics: ownership in process, ownership in outcome, and the ownership distribution. These characteristics of ownership can be applied to restitution implementation as stakeholders negotiate post settlement management plans and participation of interested parties. Ownership in process relates to whose voice is heard in negotiation and planning. Ownership in outcome relates to who has responsibility for and influence over decision making and execution (Lachapelle & McCool 2005, Van Riper 2003, McCool and Guthrie 2001). Ownership distribution, the third characteristic identified by Lachapelle and McCool (2005), refers to “who is affected by the action and how plans and decision are distributed.” Thus, ownership refers to the power to make decisions and to determine how the outcome of those decisions is distributed among interested parties. In situations with numerous interested parties, decision making power is usually unequally distributed and the redistribution of this power is challenging (Forester 1999). Identifying claimants’ level of ownership in process, outcome, and distribution can help all stakeholders understand the complexities of claimant’s restricted ownership.

## ***An International and National Conservation Imperative***

Wynberg and Kepe (1999) elaborate on some of the challenges above by discussing the conflict of interest among national and international conservation interests and local interests in resource use. Through South Africa’s ratification of the Convention on Biodiversity, Ramsar, CITES, and the World Heritage Convention, the country has committed itself to an international conservation agenda. This agenda includes protecting endangered species and aiming for a 10

percent representation of each habitat type in the nation's protected area system. These goals may conflict with claimants' interest in resource harvesting and other land rights.

Underlying these challenges addressed above are a few questions. Are the property rights given to claimants through protected area restitution (the lack of withdrawal and exclusion rights) adequate for engagement in joint management? (McIntosh Xaba & Associates 2003, Naguran 2002). Is there adequate definition of exactly what these rights are? (Kepe *et al* 2005). Is this way to settling protected area land claims advancing or compromising the restoration of land rights? (Ramutsindela 2002).

Kepe *et al* (2005) conclude that "South Africa has achieved minimal success in reconciling land reform, conservation and economic development." They point to the divergent goals of the land and conservation sectors, the power imbalances between conservation agencies and poor rural people in joint management endeavors, and the lack of clarity about claimants land and resource rights even after settlement. Given these challenges, Kepe *et al* (2005) go so far as to call for a rethinking of approaches to protected area land reform.

## **Summary**

Around the world there is a history of land dispossession, protected area establishment, and more recently, land reform efforts. The land reform process in protected areas faces particular challenges because of the conservation goals present in addition to goals of restoring and securing land rights. In South Africa, research has identified management capacity, cooperation of stakeholders, funding and benefits, and an international and nation conservation imperative as the main challenges to implementing protected area land restitution. In addition, when claim settlement agreements stipulate a joint or co-management arrangement, there are particular challenges to co-management itself. Challenges identified by co-management research are similar to those listed above and involve issues of capacity and resources, cooperation and trust among stakeholders, and an unequal power balance among stakeholders. In addition,

research from community natural resource management shows that in situations similar to South Africa's protected area land restitution, stakeholder conflict, a diversity of interests, and a need for extensive institution building should be expected.

## **CHAPTER THREE: RESEARCH METHODS**

The primary objective of this research was to explore the challenges to implementing protected area land restitution in the province of KwaZulu-Natal as directed by the claim settlement. To reach this objective, I used a regional study site with four settled and numerous pending protected area land claims. Qualitative methods provided a rich description of implementation challenges. This chapter addresses the research design and details the study area, sampling, data collection, and data analysis.

### **Research Approach**

#### **A Regional Study Site— The Province of KwaZulu-Natal**

The province of KwaZulu-Natal was an appropriate study area for both the research topic and for practical reasons. The province includes four settled protected area land claims and, in addition, has numerous claims pending whose settlement and implementation could be informed by an examination of the initial four claims. Practically, the research was based out of the University of KwaZulu-Natal where I and my advisors at UM had contacts and access to a library and workshops related to my research.

**Figure 1: Map of South Africa**



### ***KwaZulu-Natal***

The province of KwaZulu-Natal borders the Indian Ocean in eastern South Africa (figure 1). The province has a long history of conservation and of forced removals. This history and South Africa's recent establishment of democracy made KwaZulu-Natal an appropriate research area.

KwaZulu-Natal has long been a densely populated province holding about 20 percent of South Africa's population, but only 7 percent of its land base (Surplus People's Project 1982). Native reserves were first established after the British took de facto control of the area in 1845. These reserves went through various adjustments before the Union of South Africa in 1910 and continued afterwards under the 1913 Native Land Act and the 1936 Native Trust and Land Act. The reserved area became KwaZulu while the white and state-owned land of the province was

called Natal. Established black residents did not always immediately move onto the reserves and remained as “squatters” on State land in many areas. Removals were thus aimed at moving people off of designated state land and onto the reserves and even removing people from designated reserves to create or extend parks or military land. After removal, people were often given an insufficient relocation area and thus scattered into the surrounding area.<sup>12</sup>

KwaZulu-Natal also has a long history of conservation and is known for having some of Africa’s oldest game reserves (Bainbridge 2001). In 1947, the Natal Parks Board was established to manage conservation in Natal and in the 1970s, the KwaZulu Directorate of Nature Conservation was established to manage conservation in KwaZulu. After 1994, these two organizations went through an amalgamation process to become Ezemvelo KZN Wildlife. Today KwaZulu-Natal is home to more than 100 protected areas distributed throughout the old KwaZulu and Natal areas. These protected areas include 7.72 percent of the provinces’ land base (Nyambe 2004):

Situated in the dynamic setting of a recently democratized South Africa and the larger southern Africa region, KwaZulu-Natal is in an area characterized by rapid change. Since democracy in South Africa, the conservation paradigm has shifted from a protectionist approach to a focus on increasing the relevance of conservation to historically excluded communities (Wynberg 2002). Connected with this shift is the area’s present focus on protected area conservation for both biodiversity and economic development.

#### ***The Four Settlements***

As notes in previous chapters, the basis for implementation is the settlement agreement. Settlement agreements for the four protected area claims settled by 2003 included the following components:<sup>13</sup>

- Transfer of title with restrictions (except Bhangazi)

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<sup>12</sup> For more information on removals in KwaZulu-Natal see Surplus People’s Project 1982.

<sup>13</sup> See Appendix 2 for a copy of a full settlement agreement.

- Establishment of Claimant Trust or Communal Property Association (CPA) (to hold land) and public company (to engage in business ventures)
- Participation, consultation, and empowerment of claimants (as defined in the agreement)
- Representation of claimants in management and consultative structures and processes
- The review of tenders for commercial opportunities will favor proposals that involve claimants by way of share equity or other partnerships
- Claimants have the right to purchase equity in game or other assets in the Claimed Land
- A management agreement or operation plan will be written
- State commitment to elicit the support of other departments at national, provincial and local spheres for the integrated development plan on the land claimed
- Part compensation for real potential income loss from cultivation and grazing land. (DLA 2000, DLA 2001a, DLA 2001b, Tong 2002)

Background for each of the four settlements follows. Other than the first claim, Bhangazi, the claims were settled with title deed to the full area claimed. Of the four claims, three were settled within the Greater St. Lucia Wetlands Park and one was settled on Ndumo Game Reserve. All claimant groups are ethnically Zulu and located in rural areas of the province.

#### Bhangazi (St. Lucia Eastern Shores)<sup>14</sup>

The Bhangazi people were removed between 1956 and 1974 from what today is a portion of the Greater St. Lucia Wetlands Park World Heritage Site. People were removed from the portion of the park between Lake St. Lucia and the Indian Ocean after the Cape Vidal Forest Reserve was proclaimed in 1956. The land claim encompassed 26,360 hectares of the park. At the time of settlement, the claimants were 556 families.

The Bhangazi claim was settled on September 24, 1999. Unlike the remaining claims studied, this claim was settled with financial compensation to individual claimants, a share of funds from the tourist-paid community levy to the claimant trust, and claimant access for development of five hectares of land within the originally claimed land in the Greater St. Lucia Wetlands Park. The financial compensation to claimants was 30,000 rand per household. This

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<sup>14</sup> For more information on the Bhangazi claim see Tong 2002.

figure was derived by dividing the cost of purchasing alternative land with the number of claimant households.

#### Mbangweni<sup>15</sup>

The Mbangweni people were removed from what today is the Ndumo Game Reserve and Ramsar Wetlands site<sup>16</sup> during the 1940s through the 1960s. People were removed from a section of land east of the Pongola River in north central KwaZulu-Natal bordering Mozambique. The Ndumo Game Reserve was proclaimed in 1924 and people were removed beginning with the fencing of the reserve in the 1940s. The land claim encompassed 1,262 hectares of the reserve. At the time of settlement, claimants included 1,500 people or 114 households.

The Mbangweni claim was settled on November 19, 2000. The claimants received restricted title to the 1,262 hectares. This restricted title means claimants will not occupy the area, rather the settlement stipulates that the area will be managed as a protected area and Ramsar site in perpetuity. In addition claimants can not “sell or otherwise dispose of, alienate, exchange, transfer, or donate any portion of the Claimed Land to any person or institution, or mortgage or encumber the title in any way” (DLA 2000). The claimants were awarded 1,262,000 rands for compensation of land rights lost. The land will be managed by EKZNW in cooperation with the claimants.

#### Mbila (Mandleni Trust)<sup>17</sup>

The Mbila people were removed between 1974 and 1979 from what today is a portion of the Greater St. Lucia Wetlands Park and World Heritage Site. People were removed the portion

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<sup>15</sup> For more information on the Mbangweni claim see Tong 2002, Naguran 2002, and RLCC-KZN 2001.

<sup>16</sup> Ramsar designates wetland sites of international importance according to the Convention on Wetlands, signed in Ramsar, Iran, in 1971. The convention is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.



of the park bordering the Indian Ocean north of St. Mary's Hill near Lake St. Lucia and up to the town of Mbazwana. This area was proclaimed part of the Sodwana and Cape Vidal State Forests in 1955 and a portion of the area was subsequently declared a military missile range in 1968. The missile range was abandoned in the mid-1980s and the land came under management for conservation under the Natal Parks Board. At settlement the land claim included 47,452 hectares but was later amended to 52,000 hectares when a boundary was clarified. At the time of settlement, claimants included about 1,000 households.

The Mbila claim was settled July 21, 2001. Similar to the Mbangweni claim, claimants received restricted title to the 52,000 hectares. Claimants can not occupy or sell the land. The Mandleni Trust will receive 22,008,025 rand as part compensation for lost land rights. Land management is vested in the GSLWPA, which has been "appointed by the State as the regulatory and management authority of the Claimed Land in terms of the World Heritage Conservation Act and the Authority shall continue to perform its regulatory and management mandate, notwithstanding transfer of title in the Claimed Land" (DLA 2001a). Further, "NCS (Ezemvelo KZN Wildlife) or its legal or contractual successor is responsible for the ongoing conservation of biodiversity in the GSLWP of which the Claimed Land is part" (DLA 2001a). Regarding tourism development, the settlement states that the GSLWPA is "responsible for the investment, marketing and commercial development of the GSLWP of which the Claimed Land is part" (DLA 2001a). The settlement does state that claimants have an interest in revenue from the claimed land, employment opportunities, and joint business opportunities.

The Mbila claim is unique in that the settlement also allowed for grazing land. Although the Mbila people were removed in the mid-70s, they continued grazing some of the area while it was managed as a state forest. The settlement agreement initially allotted 5,000 hectares of the

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<sup>17</sup> For more information see DLA 2001a.

claimed land for grazing. This figure was increased after the boundary clarification. The remaining claimed land will be fenced and game species introduced.

#### Mabaso (Libuyile Trust)<sup>18</sup>

The Mabaso claim borders the Mbila claim to the west and was settled very similarly to the Mbila claim, although the claimed land area is smaller and there is not a grazing area. The Mabaso people were removed between 1974 and 1979 from what today is a portion of the Greater St. Lucia Wetlands Park and World Heritage Site. People were removed from an area of the park north of the Mkuze River and west of the Mbila claim. This area shares the same state forest and military reserve history as the Mbila claim. At settlement the land claim included 3,500 hectares.

The Mabaso claim was settled with the Mbila claim in a ceremony on July 21, 2001. Similar to the two previous claims, claimants received restricted title to the 3,500 hectares. Claimants can not occupy or sell the land. The Libuyile Trust will receive 5,833,645 rand as part compensation for lost land rights. The land management will be completed in the same way as Mbila. The full Mabaso settlement is shown in *Appendix 2* as an example of a settlement agreement.

#### **Methodological Approach**

Understanding the challenges to implementation of protected area land restitution occurs at many levels. Thus I used research methods that could capture the diversity and complexity of responses from the people most directly involved in facing these challenges. I found that qualitative methods that allowed me to talk with various stakeholder groups and directly observe an initially unfamiliar situation were essential to my understanding of the research. Denzin and Lincoln (1998:8) describe qualitative work as “an emphasis on processes and meanings.” Berg (1998)

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<sup>18</sup> For more information see DLA 2001b.

describes qualitative methods as systematic way of understanding social realities, how they operate, and their impact on individuals and organizations. I use these definitions to guide a rigorous approach to the research. The qualitative methods utilized in this project included informal conversation and observation, observation of meetings among stakeholders, and in-depth semi-structured interviews. These methods are germane for cases studies where random sampling is not possible and the goal of the research is to explore a particular issue in depth rather than make predictions or generalizations. The methods are described in detail below under *Data Collection*.

### **Data Collection**

This research used methods of informal conversation and observation, observation of meetings among stakeholders, and interviews.

#### ***Informal Conversation and Observation***

Informal conversation and observation allowed me to gain an important understanding of the context for the research. As an American student coming to KwaZulu-Natal, informal conversations and observations were critical for providing an understanding of the area, insight into the complexities of the issue, who the various stakeholders were and what interests they had, and personal contacts. For example, on a trip to a park with a retired game guard I learned about the management history of the area. And during an afternoon spent with claimants in the claimed land I heard stories of the plants and animals they knew well before their removal to a location in town. These kinds of interactions gave me new perspective on and appreciation for the people and land involved in the claims.

I lived in Pietermaritzburg, KwaZulu-Natal from August through December 2003 and made numerous trips to the four land claim sites. I talked with a range of people around the

province outside of my formal interviews including national and provincial government employees, protected area claimants with settled and unsettled claims, academics, and others.

### ***Observation of Meetings Among Stakeholders***

In addition to informal observations, I attended meetings among the primary stakeholders including claimant trusts, the Regional Land Claims Commission-KZN, Ezemvelo KZN Wildlife, and the Greater St. Lucia Wetlands Park Authority. During meetings I made notes about the topics and ideas discussed how meetings were facilitated, and how stakeholders interacted with each other. I also received copies of the minutes taken by other participants.

I attended meetings in Pietermaritzburg, the provincial capital and location of the head offices for the RLCC-KZN and EKZNW, and in claimant communities with the permission of the attending stakeholders.

### ***Interviews***

The primary data collected for this project are the interviews. These interviews are semi-structured, in-depth interviews usually conducted with one person at their home, office, or common meeting space (I did conduct three multi-person interviews). Interviews were recorded with the permission of each participant. I conducted interviews in September through December 2003.

Dialogue through interviews provides detailed information about issues that people are involved in. During interviews, participants can describe their thoughts, tell stories, describe their experiences in their own terms, and provide examples (Rubin & Rubin 1995). By being open to new meanings and perspective, through this dialogue the researcher gains an understanding of the intricacy and depth of the topics being addressed and has the opportunity to “probe” or follow up on comments of particular interest.

## Sampling

To address the research questions I needed to meet and interview the people most directly involved in protected area land restitution in KwaZulu-Natal. The sample was framed by people involved in one or more of the four claims described above. I selected participants through a combination of purposive and snowball sampling techniques (Babbie 1998). I identified initial participants through contacts at the University of KwaZulu-Natal and by calling organizations involved to determine who worked directly on protected area land restitution. I set up interviews with people involved and took advantage of invitations to join meetings among the stakeholders. During meetings and interviews I noted references to others involved and after interviews, asked participants if there was anyone else I should talk with to learn more.

### *Description of the Sample*

Participants in this study mainly included people from the groups most directly involved in protected area land restitution: land claimant trusts, the RLCC, EKZNW, and GSWPA. Other participants included lawyers, consultants, NGO staff, a non-claimant local community member, a former EKZNW social scientist, a PhD student, and a Department of Land Affairs staff member. The majority of the participants observed and respondents interviewed belonged to one of four major stakeholder groups. The major stakeholders in the research are designated as the parties' signatory to the settlement agreements that continue to be active in implementation. There are numerous other stakeholders groups that are less involved. Some of them are represented in the interview sample. The four major stakeholder groups are each briefly described below. They include: claimant trusts, the Regional Land Claims Commission—KwaZulu-Natal, Ezemvelo KwaZulu-Natal Wildlife, and the Greater St. Lucia Wetlands Park Authority.

Before conducting the main set of interviews, I completed five background interviews that helped refine the interview guide and become comfortable with the interview process. These

interviews are not included in the main interview set. The recorded background interviews are in addition to the informal conversations and observations described above. These interviews allowed me to test and refine my interview guide, to practice interviewing, and to gain further context for the project. Background interviews were conducted with two law professors, one retired Natal Parks Board (now EKZNW) manager, one EKZNW social scientist, and one claimant trust member. I later re-interviewed two of these participants for the main interview set.

For the main interview set I completed thirty-five interviews with a total of thirty-nine people. Participants included six women and thirty-three men. Two of the interviews were conducted with a translator and three interviews are missing 25-40 percent of the interview due to poor sound quality.

### *Claimant Trusts*

Claimant Trusts are a legal entity established to hold land title on behalf of the claimants after claim settlement. Trusts are formed in terms of the South African Unit Trust Control Amendment Act of 1998. The trusts are made up of claimant group members; the claimants themselves are strictly defined by the Land Restitution Act as the people removed from the area and their direct descendants. The trust represents the claimants in decision making with the other stakeholders. As a newly established governing entity in a rural, traditional setting, the trusts face lack of capacity, questions of legitimacy, representation of a diverse group, the cost of participation, and more. In the rural areas of protected area claims, many claimants are illiterate and have little or no experience working with government entities or with conservation as practiced by the regional conservation agencies. Among area residents, there are questions about the legitimacy, power, and authority of the new trust in relation to traditional structures.

The trust is tasked with representation of a diverse claimant group. When removals occurred in KwaZulu-Natal, alternative land was rarely granted for resettlement. Without land, removed people scattered and became incorporated into other areas, sometimes as large or small

groups, other times as families or individuals. This scattered group can make representation by the trust difficult. In addition, the larger claimant group may be skeptical of the claimant trust. Some claimants feel that the trust may be “selling out” because the trust members haven’t been able to secure inhabitation rights back to the land and because they are negotiating with conservation and other government entities. Trust members also must commit time and resources to traveling to and attending numerous meetings. The Trust attempts to meet the expectations of the claimant community in negotiations yet faces powerful state actors at the negotiating table.

During interviews, respondents sometimes called the claimant trust the “committee,” a term used for the group before settlement.

#### *Regional Land Claims Commission—KwaZulu-Natal (RLCC-KZN)*

The Commission on Restitution of Land Rights, a state entity, was established by the Land Restitution Act of 1994 and came into operation in April 1995. It is structured into seven Regional Land Claims Commission offices; one of these offices is the Regional Land Claims Commission-KwaZulu-Natal (RLCC-KZN), which serves the KwaZulu-Natal province. Since its inception, the number of claims, complexities of settlement, and internal adjustments have overwhelmed the land restitution program and slowed its progress. During its first five years, the Commission developed rules and policy guidelines to deal with the various types of claims and determine an effective process. Initially, a court-driven process was in place that proved slow and unnecessary. In 1999, amendments were passed to the Act to allow for restitution based on negotiated settlement agreements rather than on court decision (Commission on Restitution of Land Rights 2003). Through 2000, there were internal questions regarding the respective responsibilities and authority of the Department of Land Affairs and the Commission. Today the RLCC-KZN takes primary responsibility for all aspects of land restitution in KwaZulu-Natal; however, the organization is understaffed, under-resourced, and faces national pressure to settle all land claims by the predetermined date of 2005, at which point the organization is to be

dissolved. Although officially the Commission is still planning to meet the deadline, today people within and outside the organization often view it as an impossible goal.

The organization's lack of resources is exemplified by the one person with a small staff appointed to complete validation and settlement negotiation of all forestry and conservation land claims in the province. This staff must negotiate with the claimants and the other state stakeholders, Ezemvelo KZN Wildlife, and in three claims, the Greater St. Lucia Wetlands Park, in an attempt to meet the Commission's mission of land equity and reconciliation for claimants without disrupting conservation of the area.

The role of RLCC-KZN has also changed relative to the settlement implementation process. Initially, the organization viewed its job solely as settling claims. It became apparent, however, that the tough task of implementing settlement could be facilitated by the RLCC. The RLCC is now attempting to facilitate this process, however their exact role is unclear and the other stakeholders know the organization has a limited lifespan.

During interviews, respondents sometimes called the RLCC-KZN, the "Commission."

### *Ezemvelo KwaZulu-Natal Wildlife*

Ezemvelo KwaZulu-Natal Wildlife (EKZNW) manages protected areas as stipulated by the KwaZulu Natal Nature Conservation Management Act 9 of 1997. As outlined in their charter, the mission of EKZNW is to achieve, "the sustainable biodiversity conservation and ecotourism management in KwaZulu-Natal in partnership with people" (EKZNW 2002). EKZNW was created from its two predecessors, the Natal Parks Board (a primarily white entity) and the Directorate of Nature Conservation (a primarily black entity), through an amalgamation process beginning in 1994 and completed in 1998 through a provincial Act<sup>19</sup>. Before 1994, the two organizations, independent of each other, promoted conservation in the region. EKZNW,



essentially a new body, struggles to combine staff and practices from two very different contexts and to create a new vision for conservation in KwaZulu-Natal.

In July 2003, the organization began working with the Regional Land Claim Commission-KZN to create specific regional principles for guiding land claims settlement on EKNZW-managed land. The establishment of the regional principles is a critical step for both organizations but demonstrates the lack of coordinated and comprehensive approach to settlement between 1994 and 2003. Over the past few years, EKZNW has developed strategies to work with local communities including local boards to advise management and a community levy to provide funds for area projects. In the Greater St. Lucia Wetlands Park, where a new conservation entity has been established, EKZNW's role has been limited and it has struggled to relinquish management control around tourism and community development in the Park (see below).

During interviews, respondents called Ezemvelo KZN Wildlife by some part of this name or referred to the organization as Nature Conservation Services (commonly NCS) or the Parks Board.

#### *Greater St. Lucia Wetlands Park Authority*

The Greater St. Lucia Wetlands Park was established as a World Heritage Site in 1999, after an extended decision-making process that determined the area would be protected and tourism pursued for economic development rather than the originally proposed mining of the area. The Greater St. Lucia Wetlands Park Authority (GSLWPA), now the lead management agency for the Park, evolved from the leadership of the Lubombo Spatial Development Initiative (LSDI). The LSDI program promotes economic activity and growth in a region defined by parts of South Africa, Mozambique, and Swaziland. Although the LSDI initially focused on tourism

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<sup>19</sup> The Natal Parks Board worked in the Natal area, mainly populated by white communities while the Directorate of Nature Conservation operated in rural Zululand, a mainly black populated area.

and agricultural development, today, because of the momentum around the GSLWPA, most of its organization and investment is centered on tourism development and infrastructure in the Greater St. Lucia Wetlands Park. Previous to the establishment of the GSLWPA, EKZNW managed the Park and continues to manage aspects of the Park today. The Park management structure is still in transition and roles and relationships among the GSLWPA, EKZNW, and local communities are being redefined. This redefinition is sensitive as the GSLWPA moves into areas of management where EKZNW was previously established. Particularly tricky are community relations. EKZNW, having been in the area for over 20 years, is a known, although not always liked, entity. The GSLWPA, newly established, doesn't carry the baggage of 20 years of managing conservation, but also doesn't have the trust and long-term relationships that EKZNW has with some area communities.

The GSLWPA has been able to obtain development and investor money for the area. This money has brought economic benefits to the area; however, the GSLWPA is viewed by many area residents and others as uncooperative, uncommunicative, and as pushing through big projects without consulting area residents or other governing entities. The GSLWPA has close ties with the national government and international conservation agencies have an interest in the area because of the World Heritage Site designation.

During interviews, respondents sometimes called the GSLWPA just the Authority.

**Table 1: Interview Participants**

<b>Affiliation</b>	<b># of Participants</b>
Land Claimant Trustees from:	
Mandleni	6
Bhangazi	2
Libuyile	5
Ezemvelo KZN Wildlife	9
Regional Land Claims Commission	4
Lawyers or Law Professors	3
GSLWPA	2
Consultants	2
NGOs	2
Other	4
<b>TOTAL</b>	39 participants in 35 interviews (two group interviews)

### The Interview Process

All interviews were conducted in person and recorded on a digital recorder. I traveled throughout the province to meet people and when possible took advantage of participants visits to Pietermaritzburg and interviewed them there. The majority of the interviews were with people speaking English as a second or third language. These factors added a challenge to interviewing. While interviewing I tried to ask clear questions and rearticulate phrases when it seemed appropriate to ensure the question was understood. I also asked participants to clarify words and phrases I didn't understand or was unfamiliar with. In this thesis I occasionally added clarification in brackets but the quotes are a direct transcript and demonstrate some misuse of words and use of words and phrases unfamiliar in American English.

Rubin and Rubin (1995:43), describe qualitative interviewing design as “flexible, iterative, and continuous, rather than prepared in advance and locked in stone.” My interviews were semi-structured by an interview guide that contained a specific set of questions (Figure 2). I initially developed the guide when conceptualizing the research and significantly refined it through my early informal conversations and background interviews as I gained further understanding of the research context. The interview guide helped ensure that I completed a

thorough interview but it did not dictate every question; instead I tailored interviews to the participant and focused on their expertise. For example, an interview with a development consultant would focus more on details of how the post-settlement development of the claimed land is working while an interview with a land claimant might focus more on details of their involvement in the implementation process.

Before the interview I asked permission to record and assured participants that their responses would be confidential and anonymous. I began the interview by asking “ice-breaker questions,” questions designed to ease into the interview and make the participant feel comfortable. These questions were easy for the participant to answer and gave me information about their background and experience in protected area land restitution. I then moved into interview questions designed to address my research questions. These questions explored details of the challenges to implementation and what lessons have been learned in the process thus far (Figure 2).

## **Figure 2 Interview Guide**

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### Ice Breaker Questions

1. When did you begin working at this intersection of land restitution and protected area conservation?
2. In what capacity(s) have you worked relevant to the situation?

### Questions Addressing Purpose & Research Questions

1. What challenges are encountered in implementing settlement agreements in protected areas?  
Probe: have terms of the settlement agreement been met- if not why?, are terms of the agreement adequate/specific enough, politics, clarity of roles, history of land use, access rights, other challenges?
2. How are the challenges and obstacles currently being addressed?  
Probe: Who is addressing them? How? Have they been resolved? Have the challenges been resolved? If not, why not?
3. What is the role of each stakeholder (Trust, Traditional Authority, outsiders, lawyers)?  
What is the involvement of the stake- and rights-holders?

Probe: Is there cooperation among stakeholders? If so, how? How are stakeholders participating or contributing? Is there anyone not participating who should be?

4. How can these challenges best be overcome in the future? What needs to happen to address the obstacles and get past them?
  5. What is working well in the implementation of the settlement agreement?
  6. What are the lessons learned?  
Probe: What is your advice or recommendations for claimants and other stakeholders as they settle and implement their land claims in the future?
  7. What is your vision or hope for the outcome of land claims settlement in protected areas in KwaZulu Natal?
  8. Is there anything we haven't covered that you'd like to discuss related to this situation?
  9. Who else should I talk with to learn more?
- 

## **Data Analysis**

Data analysis included interview analysis as well as reviewing my notes from conversations and observations and the minutes from meetings I attended. The interview data includes over forty hours of recorded conversation and the analysis included organization of the data and theme identification.

### ***Organization of the Data***

After the interview itself, my next interaction with the data was during transcription or “proofing” of interviews (I transcribed a portion of the interviews and hired someone to transcribe the remainder). During transcription and proofing I took notes on important comments and connections between interviews. During proofing I reviewed the transcript while listening to the interview to ensure that the transcription was accurate. This was a particularly important step when participants’ accents were difficult to discern on the recording to an American ear.

Once the transcripts were proofed I went through them again, reading carefully to begin to identify the meaning of particular passages. I initially read through ten interviews and identified meaning units, passages within the interview that hold a particular meaning on their

own (Patterson & Williams, unpub.). I gave these meaning units labels that represented the meaning of particular passages. With this set of labels or codes I went back to the first interview and began coding passages while also being open to the emergence of new types of passages that warranted a new code. During this stage I used the software program QSR Nvivo to attach a code to a particular passage. For example I assigned the code “confusion over responsibility” to passages that described the confusion surrounding who was responsible for particular aspects of implementation. Another code, “global interest,” was assigned to passages that noted people or organizations around the world had an interest in the claimed land. Coded passages ranges from one sentence to a couple paragraphs and some passages received more than one code. I complete the coding process with sixty-five codes.

Tesch’s (1995) description of developing an organizing system and Strauss and Corbin’s (1998) description of open coding were helpful as I began coding the transcripts. Tesch comments that this initial identification of labels or a “classification system” is both a result of analysis and an organizing tool for further analysis. Tesch (1995:139) calls this classification an “organizing system,” noting that “the system exists for the purpose of bringing order to a collection of material that is not naturally arranged in a way amenable to analysis.” Strauss and Corbin (1998) call this process “conceptualizing,” defined as breaking down transcript passages and naming the pieces in a way the represents the phenomenon being discussed.

Although coding brings order to the data, the researcher does not isolate data into boxes without recognizing the connections between data. As I went through the coding process I also made notes on how codes related to one another. For example the code, “claimant benefit from land,” is related the code, “meaning of ownership,” since how claimants are able to benefit from the claimed land partly defines the meaning of that ownership. And the code, “recognition of claimant role,” is related to the code, “power in negotiation,” since when claimants and their rights are not recognized by other stakeholders their ability to influence negotiations is

diminished. Miles & Huberman (1984) call this process of analysis “pattern finding.” Pattern finding was an early step towards theme identification.

### ***Theme Identification***

Although the “laundry list” nature of the sixty-five meaning units or codes helped me understand the dimensions of the interviews and the diverse perspectives on each of these dimensions, I needed to make sense of these codes as a whole. This process entailed revisiting the research questions, drawing from the literature, and reviewing information gained during informal conversations and observations and through attending meetings. This background information and data was then incorporated with the coded interviews. I used all of these methods to further identify the relationships between these categories. During this process I identified themes by asking, “how are codes related to one another?” and “how can the data be reassembled from numerous categories into a few themes that describe the overarching meaning of the codes?” Strauss and Corbin (1998) call this process of putting the data back together “axial coding.” Through this process I reassembled a portion of the codes into two themes:

- Lack of understanding of what it means for a claimant group to own a protected area
- Difficulty defining tangible products of being protected area landowners

Remaining codes constituted other topics not directly addressed in this project.

Through an examination of the codes in the light of previous data and existing research, I began to see codes falling into place around the above themes. Although initially it was hard to imagine sixty-five codes coalescing into themes, once I began I found the codes fell into core areas that had resurfaced throughout the research. The thesis explores two main themes that emerged from the data.

The first theme, “poor understanding of claimant protected area ownership,” emerged gradually during the research. As people discussed the details of challenges facing implementation, this underlying issue began to surface. People didn’t always talk directly about

“meaning of ownership” but as I reviewed the codes it became clear that people spoke about this meaning by discussing a range of topics including the viability of this type of protected area restitution and competing feelings of ownership among claimants and other groups on a local to international scale. Some of the codes that fell into this theme were access to the claimed land, claimant benefit from the land, the local dynamics with non-claimants and traditional authorities, and global interest in the area. These codes and others together describe the lack of understanding of exactly what it means for claimants to own a protected area. The lack of understanding revolved around questions of how claimants’ access and use the land, how land management is decided upon and accomplished, and what is the significance of others perceived ownership or rights to the area.

The second theme, “difficulty defining tangible settlement outcomes and benefits,” arose as participants explained the difficulty in determining claimant benefit from the land and claimant participation in decision making. Although each settlement agreement references claimant benefits and a management or operations plan, these terms have not been achieved. In only one claim had a management plan been written and this plan had been rejected by the claimants. This theme incorporated the following codes among others: claimant benefit from land, claimant participation—cost, claimant participation in negotiation and management, comanagement, power in negotiation, and capacity building.

### ***Evaluating the Research***

Patterson and Williams (unpub.) provide important criteria for evaluating qualitative data. They propose persuasiveness, insightfulness, and practical utility as three ways to evaluate the research. Persuasiveness describes the reader’s ability to follow the logic of the researcher and make a judgment about the researcher’s interpretation of the data and conclusions. The reader needs adequate access to an understanding of the research context and to the data to make this judgment. In this research the reader must be able to follow the description of the research



context, the theoretical approach, the data itself— descriptions of meetings and policy and interview passages, and the research conclusions.

The second criterion, insightfulness, refers to the research's ability to describe new phenomena through examination and interpretation of the data (Patterson and Williams unpub.). For the reader, insightfulness here means grasping a more complete understanding of protected area land restitution.

Patterson and Williams (unpub.) describe the third criterion, practical utility, as an understanding of the particular concern motivating the research and the ability of the research to address this concern and inform future inquiry. Patterson and Williams explain practical utility as an important criterion for determining “the usefulness of knowledge in enhancing understanding, promoting communication, or resolving conflict” (p. 58). These criteria were used in the data analysis and should also allow the reader to evaluate this research and the results presented in the next two chapters.

## CHAPTER FOUR: RESULTS I

### POOR UNDERSTANDING OF CLAIMANT PROTECTED AREA OWNERSHIP

This chapter and the next present the results of the data analysis and are organized into the two themes that emerged from the data. The two chapters provide an analysis describing the challenges to implementing protected area land restitution. In these chapters, respondents describe the nature of protected area claims, the lack of progress in implementation of protected area restitution settlement agreements, and conceptual and practical challenges to the process. The first theme (Chapter Four), *poor understanding of claimant protected area ownership*, describes conceptual challenges to implementation. Respondents discuss the unique nature of protected area land restitution, a lack of economic opportunity, the political objective, and competing feelings of ownership among claimants and other actors.

The second theme (Chapter Five), *difficulty defining tangible settlement outcomes and benefits*, addresses more practical challenges to implementation. In particular respondents discuss the difficulties in determining how claimants benefit from being land owners and how claimants can participate in land management.

Although the results are divided into two major themes, these themes should be considered together. The conceptual challenges included in the first theme are linked to the practical challenges of the second theme. The lack of understanding around ownership can make the definition of benefits and participation difficult while the difficulty defining the tangible products contributes to the general lack of understanding about the meaning of claimant ownership of protected areas. This link will be further explored in the discussion.

#### **Poor Understanding of Claimant Protected Area Ownership**

*[Claimant] communities have major, major challenges. Because the restitution process has declared that the land now belongs to them, the portion of the land that is claimed belongs to them, and the major challenge is, and so what? What does it mean? ...What does it mean in*

*terms of ownership?* (R1, conservation manager)

A key challenge identified to protected area land restitution by this research is understanding what ownership means in this new scenario. This issue represents a conceptual challenge to implementing settlement agreements in protected area land restitution. In protected area restitution all stakeholders face a new or unfamiliar situation. Protected areas and conservation are unfamiliar to claimants and land restitution is unfamiliar to conservation authorities. Others involved in the process also lack experience with either protected areas or land restitution. And not only is this a new situation, it is also complicated. Protected area land restitution in KwaZulu-Natal is different from other types of restitution in which claimants are able to move back to the land or use the land as they choose. The unique restrictions and opportunities that come with protected area restitution raise questions about the meaning of claimant ownership.

The quote above articulated the challenge that the lack of understanding brings. This respondent and others discussed the lack of understanding around claimant ownership in two main ways. First, respondents addressed whether or not protected area land should be returned to claimant ownership through restitution. In this section respondents questioned whether the restitution option of giving claimants ownership of a protected area was a viable option. Second, respondents addressed the meaning of claimant ownership of a protected area in relation to local, national, and international entities who also felt some ownership of the area.

### **I. Is Claimant Ownership of a Protected Area a Viable Approach to Restitution?**

Three of the four claims examined in the research involved returning the claimed portion of the protected area to claimant ownership. Respondents from each sample group questioned whether or not protected area land ownership by claimants was a viable option. In this questioning, respondents discussed the nature of protected area land restitution, the problems

faced in this kind of restitution and what caused them, and came to different conclusions about the viability of claimant ownership of a protected area. Below respondents specifically discussed:

1. The unique nature of protected area land restitution,
2. Why protected area land restitution is problematic, and
3. The political objective of restitution.

### ***1. The Unique Nature of Protected Area Land Restitution***

Protected area land restitution in KwaZulu-Natal is different from other types of land restitution in which claimants are able to re-inhabit the claimed land or use the land as they choose. The title deed to a protected area is a restricted title and the land use is limited to protected area conservation. The restricted land use presents challenges for stakeholders as they try to determine what activities can replace the lost inhabitation, cultivation, and grazing opportunities. The required conservation management also requires technical skills most claimants lack. In addition, protected area claims require claimants to negotiate and work extensively with the current land managers and other stakeholders interested in conservation of the land. In protected area restitution, the restrictions attached to ownership, the limitations on land use, and the requirement to work with numerous other stakeholders, all influenced respondents' perceived viability of claimant ownership.

The land use restrictions attached to protected area claims, including no inhabitation, cultivation, or grazing, make these claims sensitive to implement given these were the historic land uses. The sensitive nature of the land use restrictions and the need to find benefits to replace former land uses can put pressure on the conservation agency. The agency is now in a position where they must work with claimants to identify benefits from the land while also maintaining conservation management.

*What makes [protected area claims] a little bit different, and sometimes very sensitive, is that . . . people are not going to go back. They cannot go back and cultivate, they cannot use it for grazing or whatever, which they used to use it for before, and they have an*

*understanding that they used to benefit quite a lot from that area. So that makes it sensitive. . . And it immediately puts pressure on conservation to deliver. You know, in terms of making the protected area relevant to people. So the biggest question now that rests with the conservation people is how do they balance the conservation aspect of the protected area and the fact that it must generate revenue to deliver benefits to the [claimants]? (R26, conservation manager)*

Through protected area claims, like any other type of land restitution, when claimants gain title to a piece of land they are tied to whatever activities that land can support. In the case of protected areas, land use is restricted to conservation management and the potential, or lack thereof, for the permitted economic endeavors, usually tourism development. Remote protected area claims may not have much potential for tourism which limits the financial benefits that can come from the claimed land.

*A lot of that [land restitution] package depends on the land that's claimed and what are the technical possibilities of that land. What are the strategic opportunities that the land offers? So people's destinies are almost linked or tied up so integrally with the piece of land. So if it's a good dairy farm people have almost hit the national lottery and we wish them well and they have a bright future. For people like Mbangweni (a remote protected area claim) it's just where that land is claimed. It's not next to a big town unfortunately. But we have to deal with that reality. . . So a lot depends on what is claimed, where it's located, and what the potential is. (R29, restitution manager)*

The land restitution process typically seeks to deliver particular “products” such as secure land rights and access, grants for basic infrastructure, some technical support, and coordination of stakeholders. In protected area restitution, land rights and access are limited meaning some of the typical restitution “products” are not available. Limited land rights and access mean claimants don’t have full use of their land which changes the meaning of land ownership.

*Conservation claims actually turn a lot of [restitution] products on its head. . . Because, number one, you don't have full access. Number two, you will have a full title, secure title, you have your title deed. What does that mean without the access or the ability to regulate and benefit out of the land use or the economic activity that is compatible with conservation? Because conservation imposes . . . the particular land use and it imposes a certain set of limited economic activities. So now from this broader concept of ownership and the full use and benefit of your land, you are now pouring it into a funnel. Which might not be bad, but it poses certain constraints. (R29, restitution manager)*

In addition to the land use restrictions that come with protected area restitution, claimants are also confronted with new and unfamiliar concepts of technical protected area management.

The complicated system of nature conservation may essentially remove claimants from the land because it is difficult for them to be involved. This respondent noted the constraint of technical management and pointed out that the “sensitive areas” that conservation agencies are managing so carefully are places that claimants used to live.

*Nature conservation with its complicated rules and laws are not really, for me, really realistic sometimes. It's a way, it's a sophisticated way of taking land out of the people. If we are told that there are sensitive areas how long have we been staying in this community with those sensitive areas and what wrong did we do to harm those areas? Why do they get it now? Because it's still there. (R15, local non-claimant)*

The land use restrictions and partial ownership that protected area claimants receive was problematic for some participants. This restitution consultant said title to a protected area should not be given to claimants *if* claimants do not have development rights and involvement in land management. He suggested that financial compensation would be a more viable option since giving titled ownership to a protected area creates false expectations. He contrasted development opportunities associated with protected area restitution in KwaZulu-Natal with the Makuleke land claim in Kruger National Park. He pointed out that the Makuleke have some development rights but felt that KwaZulu-Natal claimants don't have those rights.

*I don't think land ownership should ever have been changed. . . . What they didn't hand back to the claimants were the development rights so it's like, I'll give you some land but you can't do anything with it. You can't touch it, you have no rights to it, you can't go and live on it, you can't do anything, you have no access to the resources on it. So what's the point? . . . For example, here's your title deed but by the way, it's worthless. . . It's better in the long run to take a difficult decision which is, you'll never own the land. We cannot give back land but here's 25 million rand, that's compensation. Then you manage [claimant's] expectation. Right now there's an expectation, we are landowners, we want to get involved. This is our land. We want rent, we want to manage it. That's just not going to happen, ever. . . Makuleke is different, they were given some development rights. So they can choose a joint venture partner and they can go and develop the larger section. These guys have no rights. (R22, restitution consultant)*

In the research, participants disagreed about the importance of returning land ownership of a now protected area to claimants. Some felt strongly that claimants do need to own the land, but if claimants own it, then they must be able to use it and fully participate in management.

Without the full participation of claimants in land ownership, the ownership could be meaningless and conservation agencies would carry on just as before.

*[Claimants] must own land, but if they own land it can't be useless . . . If you own something which is useless then there'll be no sustainability. . . . What you have to do . . . is have the full participation of these guys, otherwise for me it's like pre-1994. So the thing will be just this signing ceremony. You sign, they dance, after dancing the next day you come back into reality. The minister is gone in his chopper, (name withheld) is gone in his 4 x 4 and he'll go down there, he'll look at the conservation guys, they are holding their car keys, they go to work and they say it's your land. (R28, restitution manager)*

Participants also viewed returning restricted land ownership to claimants as problematic when the restriction eliminated livelihood strategies that were not replaced with alternatives. When the Mbangweni claimants were removed, they were fenced away from the river, their main source of livelihood. The loss of a livelihood strategy through forced removal should somehow be replaced through the land restitution process. However, finding new livelihood opportunities can be challenging with the protected area restitution restrictions.

*The people at Mbangweni, the river, their only source of life in the area, is fenced in. And those people. . . the only place that they could actually plow and subsist on crops is by plowing next to the river. That's the only place that they could do any gardening. And that is important for them. And therefore if you take away that livelihood, that strategy, then you've got to develop another one. And those people haven't really managed to develop one thus far. (R2, former conservation manager)*

With this type of protected area restitution, in addition to dealing with land use restrictions, protected area claimants are suddenly working with numerous other stakeholders. These stakeholders often have not interacted with each other in the past and now they face challenging negotiations with each other over land management. The “newness” of the situation presents a learning curve for all stakeholders and means they are being pushed outside their usual routine. For one type of stakeholder, conservation agencies, restituting protected area land to claimants has also been viewed as a threat to the agency and conservation.

*Land claims settlement is a process, so it has taken many years since the land claim program began for many institutions to understand what it means. And most organizations, including ours, became resistant to the process and we looked at land claims as a threat, a big threat to the organization, and as a result, a very defensive approach was taken. (R26, conservation manager)*

Given this new situation, all stakeholders face a difficult paradigm shift associated with protected area restitution. Stakeholders face a new and uncertain situation that requires them to shift from the past approaches they are comfortable with.

*It's a huge paradigm shift and not only for this organization (conservation organization), but also for the claimants . . . Because they are also expected to shift from what they thought was the right thing, or something which they thought could bring benefit. . . In fact, a number of stakeholders are expected to move from their comfortable zones into something they are not very sure about, but which they know has a potential. (R26, conservation manager)*

The respondents above addressed the unique nature of protected area restitution and perceptions about the viability of this restitution as it is currently directed by the government. Restricted land use, difficulty replacing lost land use opportunities, and paradigm shifts among stakeholders, all present challenges to the viability of protected area restitution. In particular, finding an adequate replacement for inhabitation, cultivation, and grazing rights can be difficult. Benefits from tourism development are often touted as this replacement yet economic opportunities through tourism, and other avenues, may or may not exist depending on the opportunities in the claimed protected area. Given the questions of viability surrounding these claims, there may be a need for protected area land restitution policies to evolve through input from claimants and other stakeholders.

## ***2. A Lack of Economic Opportunity***

One of the main challenges to implementing protected area land restitution as directed by South African policy is making protected area ownership and management an economically viable option for the claimants. It is difficult to justify restitution of a piece of land that will only cost claimants money. Opportunities for financial gain through protected area management vary depending on a variety of protected area characteristics. Details regarding options for economic viability and claimant benefit from protected area management are discussed in the next chapter. Here, respondents commented on the economic opportunity for claimants and some implied that



protected area restitution is only problematic when choices are limited and there's no economic opportunity available. In KwaZulu-Natal, some protected areas make money while others rely on subsidies.

In protected areas that don't make money, title to the land is largely symbolic. Although claimants may participate in management, economic opportunities outside state subsidized conservation activities and natural resource harvesting are absent. Accessing the park's natural resources can be important, but that this access alone isn't adequate if it doesn't allow people to move beyond subsistence activities.

*How do we actually make a difference in people's lives beyond a symbolic title deed? The answer is it's very difficult especially when you look at the visitor numbers of Ndumo [remote protected area], very low. If you look at access issues, people utilizing a sustainable harvesting system . . . we've been able to negotiate that. But that's more of a subsistence thing, so it doesn't really address the need for income, it doesn't really address the need for jobs, it doesn't really deal with people's need to live beyond the immediate survival issues, food on the table. So people are always caught up in a cycle of collecting firewood, collecting water, so they never move on to higher levels. (R29, restitution manager)*

And the reality is that certain parks don't have the ability to make money. These areas could be incompatible with land restitution because they need to be conserved for biodiversity values but there is a lack of economic opportunity for claimants.

*When you don't have accommodation facilities, there's no private enterprise that's going to run an operation in the small little reserves. And it costs more to try and collect the money, just the normal fee. So it is, from a conservation point of view you can't relinquish those kinds of areas because their biodiversity value is important, but there's just not economic incentives. (R14, conservation manager)*

The potential lack of economic opportunity described here and other challenges associated with protected area restitution led one respondent to comment that protected area claims could end up in court. "In the future this could be challenged in courts and then it might have consequences that might not be nice, that might not be conducive to the whole process of planning" (R30, conservation manager). However, despite the challenges, ultimately restitution seeks to fulfill a political objective that may necessitate resolution of these challenges rather than abandonment of the option of protected area ownership by claimants.

### 3. A Political Objective

As a component of South Africa's land reform program, land restitution has a political objective of restoring land rights, albeit sometimes limited rights. The Restitution of Land Rights Act 22 of 1994 was adopted, "to provide for the restitution of rights in land to persons or communities dispossessed of such rights. . ." (South Africa Government 1994). The restitution program does allow for other options, such as financial compensation and government assistance, instead of returning land. However the restitution program, and land reform as a whole, aims to change land ownership patterns in South Africa. To meet this goal, claimed land or alternative land must be restored to claimants.

Despite the challenges associated with protected area land restitution, the political objective of returning land to claimants is an important one. Land restitution should help achieve racial equity in land ownership and if conservation land isn't restored to claimants other land types might follow this trend. A trend of not restituting certain type of land could ultimately defeat the purpose of the restitution program.

*What we are saying is that conservation, the restoration of conservation land, is not incompatible with meeting the political objective. At the end of the day there is a political objective, we cannot be deterred from that political objective. We have a specific mandate. You know the mandate, reducing the racial schism or the racial divide in terms of the land ownership. And if we are going to make conservation land as the first category of no-go areas of restoration, it could start a whole series of no-go areas which because of its classification it's untouchable or unrestorable to them. (R29, restitution manager)*

As the respondent above emphasized, protected area restitution, fulfills the political objective of redistributing land ownership in South Africa. The *Principles that Would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* document created by the DLA in cooperation with the Department of Environment and Tourism should guide the process. These guidelines state that protected area title and ownership can be given to claimants with relevant restrictions when claimants can derive income without physically occupying the land and

when conservation management occurs through partnerships “to empower, enskill, and provide material benefits to partner communities and help facilitate socio-economic development and community support for the principles of conservation,” (National Council of Provinces 2002).<sup>20</sup>

The viability of returning claimed protected areas to claimant ownership has been questioned but with direction from the DLA, stakeholders are moving forward.

### ***Summary***

The discussion above addressed the unique nature of protected area restitution, the lack of economic opportunity, and the political objective that respondents struggled with in considering the viability of protected area ownership by claimants. The unique nature of protected area restitution, including restricted land use, the technical skills required, and the need for paradigm shifts among stakeholders; the lack of economic opportunity and the difficulty replacing lost opportunities; and the political objective, all influenced respondents’ perceived viability of this restitution and led them to different conclusions.

In addition to the considerations addressed above, there is another important component to protected area restitution—how this restitution, protected area ownership, repositions claimants among a variety of actors who also feel some ownership of the land.

## **II. Competing Feelings of Ownership: The Meaning of Claimant Ownership Among Other Actors**

A second aspect of poor understanding of claimant ownership is that protected area management involves numerous interests, organizations, and other actors. Protected area restitution results in claimant ownership of land that a range of people and organizations also

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<sup>20</sup> For more information on guidelines see Appendix 2, Principles that Would Guide Settlement of Restitution Land Claims in Protected Areas. DLA, South Africa.

have an interest in and feel ownership of. These actors may not have direct participation in the protected area management but they may influence decision making through pressuring government or the stakeholders. Protected area restitution in effect thus changes the relationship that claimants have with others interested in the area. Claimants face new pressures and new responsibilities as land owners. As holders of a title deed their role is repositioned relative to neighbors without title, they have a new role with state actors, and they have new, although ill-defined, global significance. This repositioning means a variety of things for claimants. Other actors now view them differently; claimants may be given more respect, be viewed as a threat to established authorities, or experience some other changed status.

The meaning of land ownership for claimants situated among these other interests is complicated. Protected areas in KwaZulu-Natal and elsewhere provide environmental, economic, and social benefits to people locally, nationally, and internationally. In World Heritage Sites and other internationally recognized areas, there is an increased sense of international importance and ownership. Actors at local, national, and global scales may see protected areas in South Africa as important for not only for conservation but also for land restitution, social justice objectives, and economic development. Conflicting meanings of ownership exist among different actors and even within one group. For example within a claimant group, older people who were physically removed from the area and their grandchildren who have never lived in the area may have different ideas of what this restored ownership entails.

The number of people and groups (local to global) who feel some ownership or exert some control of the now claimant owned protected area puts the new landowners in the heart of decision-making and management at much larger scales than they have previously been involved in. In this situation, it has been difficult to understand the role of the new landowners and what it means for them to share ownership responsibilities for land that historically belonged to them and their ancestors but now has importance to a wide range of people. Although the claimed land is in essence private land with, albeit restricted, title held by the claimants, it's being managed as a

public good. The new role and authority of the claimant land owners in this private/public arrangement is not fully clear.

The issues that arise from what is, in practice, shared ownership, are illustrated in respondents' discussion of how ownership rights are spelled out in the title deed, the local dynamics among claimants, traditional authorities, and non-claimants, and the significance of national and global interest in the area. The following responses demonstrated the variety of dynamics present at each scale, some of the conflicts among actors, and what benefits might be expected at a local, national and global scale.

The section is organized into comments on:

1. Title deed of a protected area in a communal land system
2. Geographic and social diversity in claimant groups
3. Claimant ownership in the context of a Traditional Authority
4. Claimant ownership in the context of local non-claimants
5. Claimant ownership in a regional and national context, and
6. Claimant ownership in a global context.

### ***1. Title Deed of a Protected Area in a Communal Land System***

The title deed is the key that repositions claimants and legitimizes their ownership to the land many have interest in. Yet a title deed to a protected area in a rural and communal land system was sometimes confusing. The confusion over title is a basic challenge for protected area restitution and reflects the lack of understanding of what claimant ownership means. Three of the four settlements included in the research involved transferring a title deed to the entire claimed area to claimants.<sup>21</sup> Claimants that received a title deed were living in a communal land system

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<sup>21</sup> The Bhangazi claim was settled with financial compensation, however, stakeholders are negotiating returning title to claimants for a few hectares of the protected area.

and had little or no experience with land ownership through title, let alone protected area title. Ironically they had less control over the titled land than they did over their area of communal land. Given the lack of claimant control and use of the claimed land, the notion of the “hollow title” came out in the research. These interview excerpts demonstrate confusion about the meaning of having a title deed and some confusion about what a title deed even is.

*Once you begin to talk about conservation land use, which means no people on the land or as limited human impact on the land as possible, you begin to realize that the title, the first prize, that title is hollow. It's meaningless without the physical occupation and being able to walk on and really connect with it. Okay? If you buy a normal farm and you put people there, they say, we understand this, we understand the physical benefits now and we determine how it's used. So there's this whole issue of the symbolic title. And there've been debates to say why did you give people symbolic title? That doesn't mean anything. Why don't you just give them compensation and let them develop somewhere else and have meaningful restitution? (R29, restitution manager)*

Not only can the title seem hollow, a title deed itself is a foreign concept for some claimants living on communal lands. Understanding this new concept is further complicated in protected area restitution when there's also a lack of understanding among other stakeholders about what the title means.

*The land was going to come back in terms of ownership, with a title deed, which is a complicated process in terms of most of the people staying in that area, they don't even have title deed for their own land where they are staying now. So if you say you own the land with a title deed, it doesn't mean anything to them because they say, “the house where I'm staying, I don't have any title deed but I'm owning that land. I'm doing whatever I want.” (R18, conservation manager)*

*So having a title deed itself was confusing to people? (Interviewer)*

*Confusing. “What do you mean? I don't have a title deed for the house and home. I've got fields. I do whatever I want. So if you point to other land and you say that will be your land. What do you mean, if I don't touch that land? If I don't move in there? . . . To me a title deed is something I never saw so it will be the first time so what does this thing mean?” (R18, conservation manager)*

## **2. Geographic and Social Diversity in Claimant Groups**

The claimant group is defined in the settlement agreement as the people dispossessed of land and their descendants. The members of the claimant group are specifically identified and listed during the settlement process. Although the claimant group is clearly defined they are not

necessarily cohesive. Claimants are often diverse both geographically and socially and ownership has different meanings even within one claimant group. After removal, people were given an inadequate, if any, area for relocation and thus scattered and were sometimes incorporated into other communities. The land restitution process in essence has to recreate a geographically scattered community who will now own the land and be represented by the claimant trust. Socially there are also differences between elders and the younger generation. Within a claimant group there are older people who remember the removal and younger people who have never lived on the land their relatives were removed from. These two groups often have different hopes for the restitution process. Elders may hope to return to inhabit, cultivate, and graze the land while younger claimants may be more content to remain where they are and use the claimed land for conservation and tourism. Elders and traditionalists are particularly attached to the land through religion. Traditional Zulus practice ancestor worship and the dead are buried in their homes. The significance of these gravesites and the importance of access to them drive the desire of some elders to return to live on the claimed land.

A challenge the restitution process faces is how this diverse claimant group can be represented and involved in decision making. Claimants may struggle to find a common voice in the context of the diversity of interests and opinions within the group. The title deed that claimants receive is held by the claimant trust and it the role of the trust to represent the claimants. As the decision making body for the claimants, it can be difficult for the trust to adequately represent a diverse claimant group in negotiations. The trust also faces challenges when their constituency blames them for the lack of settlement implementation. Below respondents discuss the diversity among claimants, their different ideas of protected area ownership, and the job of the claimant trust to represent them.

The claimant group is often referred to as the claimant community, yet there area a wide range of interests within a group that was dispossessed of their land thirty or more years ago. The claimant group does not necessarily share common goals and this can make it difficult for the

claimants trust to negotiate with other stakeholders on behalf of the claimants.

*So what's a community? In this case it's a group of people that have an interest in that land because they were displaced off it. And their interests in it range from, I'd like to go back to where I was born and die there, to, I see an opportunity to make a lot of money out of this. You've got that range of claimants and you have to try and find a resolution. (R9, NGO)*

The claimant trust is challenged to balance the desires of elders and other claimants who still want to go back to the land with the potential benefits of protected area tourism development and other benefits.

*You have a huge proportion of your displaced people who are older, who have directly experienced that removal and a still have a huge amount of bitterness and they want to move back onto the land. So that is what the [claimant trust] is trying to deal with. And they know if we handle this carefully, we can get benefits, good benefits, for our membership. And they're going to weigh business opportunities against people who are simple, who have been subsistence people all their lives and want to just move back to a piece of land because for the last 300 years that's where their family has lived. (R3, conservation manager)*

And even after the claim settlement, a component of the community may still want to inhabit the land, to go back. These people want to return particularly when they don't see any implementation of the settlement agreement taking place on the land.

*Some people are looking for going back to the land to build their houses. . . if they don't see anything happening, then they start thinking that this thing is not happening and we want to go back. (R27, claimant)*

The claimant trust is challenged to represent this diverse claimant group which has a variety of goals for land ownership. Meanwhile the trust and claimants are also situated among other groups for whom the claimed protected area has a variety of meanings including the traditional authority of which it is a part.

### **3. Claimant Ownership in the Context of a Traditional Authority**

Competing feelings of ownership over the claimed land can come from a very immediate local level: the larger community the claimant group is a part of. On a local scale, the legally



defined claimant group is situated within a larger Traditional Authority<sup>22</sup> and a number of other Traditional Authorities and area residents. As mentioned, the claimants are strictly defined as those people removed from the area and their descendants. Often this particular group was never defined as separate from a larger group of people until they were removed and later given definition through the Land Restitution Act and their claim. Tensions may arise between the claimants and their traditional leader when a traditional chief feels he has a legitimate claim on the land his people were removed from even if he himself was not removed. In some claims the Inkosi may even lodge a separate claim to the land from the claim lodged by people who were removed. Although these claims have been deemed invalid, they demonstrate the ownership over the land that the Traditional Authority feels.

In addition to disputes about the claim, competing feelings of ownership between the claimants and the Traditional Authority can arise when the claimant trust is established to hold title to the reclaimed land. When the claimant trust is formed through the restitution process a new decision making body is created within a traditional system. The trust holds title to land, development funds, and the ability to negotiate with the state. The role of this new trust can threaten the Traditional Authority of which it is a part. As one respondent said, “the power of Inkosi is on the land” (R31, claimant). When a new entity is created to hold land ownership apart from the traditional communal system, the traditional leadership loses influence. Because the Inkosi’s authority is tied to the land, the traditional structures may feel threatened by claimants’ land ownership through title and there are fears about land restitution dividing claimants from the Traditional Authority in the area.

*The land reform program, when it began, with this issue of forming claimant trusts or CPAs, it immediately raised suspicions that it has come here in South Africa to divide communities from their current local governments. And one of the biggest suspicions was that we are now going to have within one traditional authority . . . a community*

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<sup>22</sup> Traditional Authorities are defined as geographic areas and as the people living within that area who acknowledge the authority and leadership of a particular chief. The Traditional Authority refers specifically to the chief and his advisors or council.

*which is a claimant community versus a community which is a traditional authority community. Those are fears that came with the restitution. (R26, conservation manager)*

However, claimants and the traditional leadership can work together even after initially competing for authority. Occasionally claimants and an Inkosi lodge competing claims for the land. In one claim a claimant tried to lodge an individual claim but the RLCC told him he needed to register for the community. At the same time the Inkosi tried to lodge a claim on the land since he was the traditional leader of the people who were removed. The Inkosi's claim was rejected and eventually he came around to supporting the claimants' claim.

*The time came when the government changed in South Africa and . . . I lodged the claim in Pietermaritzburg myself. When I started to lodge the claim I lodged individual claim, my claim for my family. Then Pietermaritzburg, at the Land Claims Commission, they say no, you cannot claim that area, it was a communal land so you must claim on behalf of the community. If you want your claim to be effective go back to your community, mobilize the community so that the claim would be valid. And then I went there. . . Inkosi also tried to lodge a claim, but his claim was not accepted by the Land Claims Commission because Inkosi was not removed there. So it took about two years. I was trying to explain to Inkosi and say, no let's use this claim because I've already lodged the claim. Eventually Inkosi say no, no problem, go ahead. (R31, claimant)*

But competing feeling of ownership associated with restitution can also separate claimants from the Traditional Authority. In some situations the RLCC chooses to incorporate the Inkosi into the claimant trust (or land claim committee) to reconcile the division. However, it is then the responsibility of the claimants and Traditional Authority to work together into the future. And future challenges could arise if claimants want to remove themselves from the Traditional Authority.

*[Land restitution] makes those individuals who have claimed the land independent of the tribe. It created problems when . . . the claimant committee were saying at a meeting that they don't want the Tribal Authority to have a say over their land. They have a title while the Tribal Authority has no title. The Land Claim Commission was very wise because in order to resolve that conflict they decided to say that Inkosi is part of the land claim committee for the community although . . . he wasn't dispossessed himself. Just to try and soften everybody's agitation. . . But obviously one is aware that it might create a huge problem in the future. Because some youngsters, descendants from the current claimants might say, if we have a title deed no one is going to tell me about how to use the land, the Inkosi doesn't have anything to say to me, it's my land and I have the title deed. (R1, conservation manager)*

Involving the traditional leadership in the land claim and its implementation can be important. However, involving strong traditional leaders may also negatively influence claimants' participation or inhibit claimants from taking decisions.

*I think the involvement of the tribal leaders in this whole process is, some of them aren't claimants but they come to the meetings and say what they have to say, it's an indication that there's a huge reluctance to accept that these guys (the trust) can actually do their own thing. Of course, the people are too scared to actually do anything to contradict the tribal leaders because they still live in the tribal area. How fair is that process? (R22, restitution consultant)*

Competing feelings of ownership among claimants and Traditional Authorities is an important dynamic although not unique to protected area claims. The next section addresses additional local scale dynamics particular to protected area claims.

#### **4. Claimant Ownership in the Context of Local Non-claimants**

After settlement, claimants are repositioned among numerous local non-claimants including and beyond the Traditional Authority. Local non-claimants who may feel some ownership of the claimed protected area include people in the same Traditional Authority, people belonging to other Traditional Authorities, and other area residents.

There are two important dynamics among claimants and local non-claimants that are affected by the claim settlement. First, the impact removals had on non-claimants complicates claimant-neighbor relations. When people were forced to leave their land, people from their own or from another Traditional Authority accommodated them. The influx of the people who were forced off their land into these areas had an impact on available housing, cultivation, and grazing land for everyone. Yet the Land Restitution Act specifically redresses injustices the claimants suffered. Claimants have an opportunity to benefit from the claimed land yet the people who accommodated them, gave up land and are still giving up land for them, do not receive the same benefits. If claimants returned to the claimed land, their departure would free up land for those who had accommodated them—in protected area restitution this isn't possible. And in addition to

accommodating claimants, although non-claimants weren't removed from the area they may have lost access or harvesting right to the land through the removal. Thus the discrepancy in restitution benefits can cause tension between claimants and non-claimants. This leaves the people on the ground—the claimant trusts, traditional leaders, the Land Claims Commission, and conservation authorities—to determine how to maintain peace and a sense of equity in a land restitution process designed to benefit some neighbors and not others.

Secondly, protected areas are often bordered by a number of non-claimants communities who, with the new “benefits beyond boundaries”<sup>23</sup> talk of conservation authorities, hope to gain some benefit from land that they have been fenced out of for years. In fact South African conservation agencies are now mandated to work with these communities in an attempt to make protected areas relevant to and supported by park neighbors; in essence conservation agencies want to promote feelings of ownership of the protected area among area communities. With land restitution, conservation agencies and claimants are put in a position of navigating how the claimed land benefits claimants as well as other people in the area. Through conservation agencies' community programs, local non-claimants may have been receiving some revenue from the park or access to harvest some resources. Now this land is owned by the claimant group, the distribution of benefits from the land could cause resentment by either claimants or non-claimants or the distribution could change.

The first dynamic, that of non-claimants accommodating claimants after the removal, could be problematic during implementation if there is a discrepancy in benefits between the two groups. This dynamic is unique to protected area settlement since claimants don't return to the claimed land which would free up the land where they've been staying for use by those that accommodated them. The benefits claimants have access to after settlement could also cause

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<sup>23</sup> Held in Durban, South Africa, the 2003 IUCN sponsored World Parks Congress theme was “Benefits Beyond Boundaries.” During the Congress, rural people residing near protected areas and government officials alike discussed the benefits local people could receive from protected areas.

tension with other local groups who don't have the same access.

*The way I looked at it is everybody's grazing land was halved, not just the ones that were moved. But the only people that are receiving any benefit from the restitution process are the people that were physically moved. And it's fine if you can buy a piece of land back and you move the people back to where they were because then as the community they increase their proportionate share of the grazing area. But in the case of conservation that doesn't happen. So they're just getting money in most cases. But the people that absorbed them are getting no money. I think that's a problem. (R22, restitution consultant)*

However the *Principles that would Guide Settlement of Restitution Land Claims in Proclaimed Protected Areas* recognizes that “a national park’s human neighbors should share in the management of and the benefits derived from that park rather than being excluded from it” (DLA 2001:4.3). This principle could direct efforts that would ease some of post-settlement tension between claimants and non-claimant neighbors. Efforts could include job opportunities for non-claimants as infrastructure and investment is brought into the area.

*When these guys were pushed out of their land that they'd been using for centuries, they went out and stayed with the other communities, they didn't pay anything. But now that there's settlement, it's only the people who were evicted that are being compensated. But again in the conservation claims, these guys remain in the same communities. There is the potential for conflict, the two groups now are not on good terms. . . It is a problem but I think there is a provision for that in the way that the jobs, if you look at the investment process, there will be jobs, there will be business opportunities, those go to the broader communities. So whether you are a claimant community or a non-claimant community, you can go for those jobs. (R21, conservation manager)*

On the local level, balancing the benefits that flow from the protected area among claimants and other groups living along the park boundaries is also important to conservation authorities. The Ezemvelo KZN Wildlife charter recognizes that “neighbors of protected areas have a direct interest in the management of protected areas” and the organization pursues a number of activities to involve neighbors in the park (EKZNW 2002). The challenge is determining how the involvement of claimant neighbors and non-claimant neighbors differs in regards to benefit from the park and participation in management.

In their new position as land owners, claimants should benefit from the settlement in certain ways while other opportunities can be made available to non-claimant groups. This

restitution manager asserted that claimants should be the primary beneficiaries while local non-claimants can benefit from the land restitution through the “spillover effects” that occur with development of the claimed land. She also said that claimants have a responsibility to ensure that people around them are benefiting.

*For claimants and those around the community. . . as far as I'm concerned, the people that were affected and that will own that land are the first layer of benefits. They must own that land and they must benefit from that land. There can be a ripple effect, spillover effect in terms of their families. But if there is development in that area, the way I see it is all these people can benefit; there's a lot of employment, there's a lot of social programs that can benefit the rest of the community . . . The beneficiation of the community around is in terms of the broader social programming, infrastructure, better roads, better services and all of that . . . The nucleus is there, the owners of the assets, and then they beneficiate others to make sure there's broader development. (R24, restitution manager)*

Claimants and non-claimants were both impacted by the removals because everyone lost access to the land for any purpose. The impact of the land dispossession on claimants and local non-claimants alike makes it important to consider how local non-claimants fit into the restitution process and what benefits or opportunities are available to them. As noted above, EKZNW has acknowledged the importance of all protected area neighbors. This acknowledgement has led the agency to consider how claimants and non-claimants alike can benefit.

*In conservation land claims, we said there are benefits that people used to enjoy irrespective of whether they were residing within what we now call a protected area or outside that. So in our arrangement, irrespective of whether you are a claimant or your not . . . there are going to be the benefits of this general community . . . Those benefits include access to the park, sustainable harvesting of resources, access to sacred sites, and many other benefits that you can think of which are relevant to local communities. We also have . . . a community levy. And community levy is for all of the people. It has nothing to do with whether you're a claimant, or you're not a claimant, it looks at whether you are adjacent to the specific area, so if you are, you're entitled to benefits that come through this community levy plan. (R26, conservation manager)*

## **5. Claimant Ownership in a Regional and National Context**

In addition to claimants' new position among local groups, as protected area owners they also have new importance beyond the local scale. Regionally and nationally, protected areas also have cultural, environmental, and economic significance for citizens, regional and national

NGOs, and government bodies. Despite claimants' new position, regional and national entities with interests in the area may or may not know or care that the land is owned by claimants. And as unfamiliar as these interests may be with the claimants, the claimants are also unfamiliar with who these interests are. In South Africa, some protected area are envisioned, and being developed, as a region's primary economic driver through tourism. For example, the GSLWPA, is planning to soon develop eight new sites for concessions that will bring over \$60 million worth of private investment into the park and create 900 permanent jobs (Mail & Guardian, Feb. 6, 2004). There has also been extensive government investment in upgrading infrastructure. This park has three settled land claims and nine pending. This economic vision is far beyond the vision a claimant group has for the claimed protected area and raises questions about what significance claimants have in conservation and tourism development at such a scale.

Respondents below discussed the position of claimants relative to regional and national entities in a variety of ways. They talked about how the national government is not a neutral party, how national government can benefit from protected area land restitution, and how claimants are subject to government regulation.

The state is not a neutral player in protected area land restitution. Both the Regional Land Claims Commission and one or more conservation agencies represent aspects of state interest during the restitution process. Given the conservation or other agendas of the state, it is important the claimants have access to an external or neutral body to advise them of their rights.

*You must remember that national, in this instance, isn't a neutral player. They've got their policies and they've got what they want in their plans in regard to the land. So you'll never get a sort of a neutral perspective from them or a very unbiased information system and education system telling people exactly what their rights could be. Because nationally they made it very clear that they wanted this as a conservation area. That's a problem. So in a sense it would be far better if you could have a sort of neutral organization, be it even an international organization through the UN, informing people exactly what rights they could have in relation to the property. (R25, lawyer)*

The states interest is also represented through the restrictions in the settlement agreement. Management of the claimed land is subject to national legislation whether it's South Africa's

World Heritage Act or other environmental legislation. However, as protected area owners, claimants' land management is now regulated by laws they are largely unfamiliar with. These regulations are designed to guide the operation and management of the claimed land and sometimes impact planned activities. State regulations can delay development projects that would benefit claimants on the claimed land.

*The problem has been that because the place was declared a World Heritage Site there's a whole lot of national legislation that had to be promulgated and regulations and conceptualizations to start with so that any development on that land has been delayed for quite a long time. And so real benefits were not immediately there. (R25, lawyer)*

Given that the state's interests are fairly well represented in the protected area restitution process, the nation can expect to receive the benefit of continued conservation land management from protected area restitution.

*As far as the nation is concerned, benefits to the state [from protected area restitution] will be only through preservation of portions of land that we have that needs to be preserved. So we need this biodiversity, we need it. Any nation, I think, needs that. So that benefit will be literally that these areas will not be destroyed, will be upheld. They'll be even further developed and improved in status. That's what the national government should have. No other benefit there should be. . . they shouldn't expect anything else. (R24, restitution manager)*

## **6. Claimant Ownership in a Global Context**

As protected area land owners, claimants also have a new position in a global context. And there is a global common good associated with the conservation of protected areas around the world. Particularly in the case of RAMSAR, World Heritage, or other internationally designated sites, there is a global interest in the area. Respondents here discussed balancing claimant interests with global interests, how the world might expect to benefit from protected area land restitution, and showed an awareness about the world's interest in their land.

Claimants with claims on the Greater St. Lucia Wetland Park and World Heritage site demonstrated a particular awareness of the claimed land's global importance. If claimant trusts acknowledge and accept this global importance, they enter into a position of balancing accountability to local interests with accountability to the world.



*Our role is that the government looks to us as a trust. Anything which can happen we can be in because the government trusted the whole nature to us. The area is belonging to what they call is World Heritage Site, and they emphasized and told us be careful, because this place belongs to world. Yeah, the whole world is looking to what we are having here. So we are accountable. So we are also accountable to the government. And we are also accountable to the traditional structure in the area because they are always looking to us, what we are doing. So our role is on both sides. Looking whether we are doing well or we are doing wrong, we always check ourself. (R31, claimant)*

Some claimants were comfortable with the claimed land having meaning to many people and even proud to own an internationally important piece of land. The international importance of the land inspired this claimant to move beyond the violence and removals of the past, and now have a vision about the claimants' new role and position as protected area land owners.

*These things of land claims, they are new to us, you know? We claim land because there were some people who took it . . . So now let the things run smooth. There must not be fighting. Sometimes they were fighting on those days of our grandfathers, but let us now use negotiation skill and be patient and try to negotiate things and try to have vision about the thing. What do we want to do with it? Not just claim land because of simply claiming it. Let's claim the land with a vision . . . And let's benefit the community, let's benefit the country, let's benefit also the world, especially the nature. This is a world treasure. (R31, claimant)*

The claimed land has global significance for conservation and local significance for access to land and economic benefit. There is thus a need to manage and develop the park for claimant benefit while ensuring that the conservation status as a World Heritage Site is not compromised by these activities. Through protected area restitution, global interests concerned with conservation can be confident that management of the claimed land will be consistent with standards for protected areas and the associated opportunities will be available.

*[Claimants] are not going back. . . this is a prime area for the global picture of conservation. Let's keep it like that. So the world will know we cannot destroy these wetlands . . . There can be areas of research. There can be areas of whatever the case can be. And therefore, once the people own this and understand this thing, the world bodies need not worry. . . They can point, we've got one in Scotland, I don't know, world this, world this somewhere else, wetlands in South Africa. This is what they can count. That's how the world can benefit. (R24, restitution manager)*

## **Summary**

Through land restitution and the title deed, the claimant group is repositioned relative to

all other interested actors. In addition to dealing with internal disputes, the diverse claimant group enters new and sometimes confusing relationships with local, regional, national, and international bodies. These new relationships may elevate claimants' status with conservation managers and other decision making bodies. At the same time claimants may become a threat or are put in a position of competing with a Traditional Authority or local non-claimants for benefits or decision making power. When implementing protected area restitution, actors need to be sensitive to the new position of the claimants and the effect of this repositioning on other groups, particularly on a local level.

## **CHAPTER FIVE: RESULTS II**

### **DIFFICULTY DEFINING TANGIBLE SETTLEMENT OUTCOMES AND BENEFITS**

This chapter demonstrates that central to the meaning of claimant ownership is the question of how claimants will be involved with the claimed protected area that many actors have an interest in. Without a clear understanding of the restricted ownership, defining the tangible outcomes and benefits of being protected area landowners, such as economic benefits and participation in land management, is also challenging. Claimants' economic benefit from the land and participation in management and decision-making may depend on the current conservation management agency and/or what opportunities the land provides.

The two most recent settlements in KwaZulu-Natal, Mbila and Mabaso, were in the GSLWP and may be a model for future settlements. These agreements have defined participation as "having a say in and contribution to the developments taking place in the Claimed Land and benefiting from the revenue accruing from such developments" (DLA 2001a & DLA 2001b). The settlement agreements further direct claimant participation stating, "provided such participation takes place within the legislative consultative framework and the benefits do not undermine the financial integrity or sustainability of the GSLWP" (DLA 2001a & DLA 2001b). This definition of participation relates primarily to development and is further qualified by the statement about maintaining park integrity thus it gives a somewhat weak mandate for participation. However settlement agreements also call for "genuine and proper consultation" and empowerment of claimants. The language of consultation and empowerment strengthen the case for claimant involvement in decision making. Consultation is defined as, "having a say, direct or via consultation . . . in the manner in which assets and liabilities as well as governance parameters are organized and run" (DLA 2001a & DLA 2001b). Agreements further states claimants should be involved in management structures. Empowerment is defined as "the existence of the environment or conditions that enable persons. . . to have access to mental,

cultural, social and economic information, skills and capabilities in order to see and understand opportunities, options and choices and be able to utilize those opportunities, options and choices in the best interest of themselves and the broader community of which they are part” (DLA 2001a & DLA 2001b). Achieving claimant participation, consultation, and empowerment involves capacity building efforts. Some aspects of building claimant capacity are discussed below.

The lack of settlement implementation and difficulty determining tangible products of being land owners is in part associated with a lack of post-settlement planning. By December 2003, subsidiary plans were not yet in place (Mbila, Mabaso) or what was in place was being contested (Bhangazi, Mbangweni). To accomplish participation, consultation, and empowerment of claimants, the settlement agreements state that subsidiary plans should be put in place. This post-settlement planning would entail specific plans related to co-management, benefit distribution, etc. The plans would be written by relevant stakeholders. For example in the case of a co-management plan, the claimants and the conservation agency would be involved. The settlement agreements call for subsidiary plans to include, “a component dealing with a plan for genuine empowerment of land owners (including participation, capacity development and empowerment plans) and a spelling out of, “management goals, programmes and implementations strategies” (DLA 2001a & DLA 2001b). Although these plans were not in place, respondents had many ideas about what they could include such as ideas about claimant benefit and decision making opportunities.

Within the guidelines of the protected area claims policy, stakeholders still faced challenges in *determining* the details of claimants’ economic or other benefit and claimants’ involvement in decision making. In addition, *implementing* these decisions about benefits and involvement was challenging. In the research, participants discussed the tangible products of being land owners in two main ways. First, how claimants can benefit from the land, and second, how claimants can engage in decision making about the land. This chapter is divided into a discussion of claimant benefit and a discussion of claimant participation in decision making.

## **I. Claimant Benefit from the Land**

Determining how claimants will benefit from their claimed land is a key piece of implementing protected area land restitution. Previously, respondent R29 (restitution manager) commented that benefits are determined in part by the nature of the land claimed; once claimants own the land they are constrained by activities that land can support. In the case of protected areas the activities are determined by the conservation management mandate and by the potential for economic opportunity associated with each protected area.

Protected area settlement agreements mainly define claimant benefit in the section on claimant empowerment (DLA 2001a & DLA 2001b). An objective stated in that section is that “economic, management, and social empowerment of the Claimant Community . . . is achieved through the process of restitution of land rights” (DLA 2001a & DLA 2001b). The settlement agreements state that claimants’ have an interest in economic benefit from developments; skills will be transferred to claimants; there will be sustainable employment creation; the conservation agency will structure tender adjudication requirements with commercial investors in a way that favors involving claimants by way of share equity or other partnerships; and claimants have the right to purchase equity in game or other assets. (DLA 2001a & DLA 2001b). Because claimants lose opportunities for inhabitation, cultivation, and grazing on the land, settlement agreements also provide a payment for partial compensation of “real potential income loss from traditional cultivation land, actual grazing land and . . . other historical rights and uses of the land” (DLA 2001a & DLA 2001b).

Although the notion of a title can be confusing to claimants, as described previously, they understand that the settlement agreement calls for some benefit for them. Claimants know that now they are land owners, however restricted, and because they own the land they should benefit from it in some way. In line with the settlement agreement, other stakeholders agree that claimants should benefit from the land; the difficulty is determining how. The challenge lies in determining what the benefits are and then implementing them. Below, respondents first address

the struggle in determining appropriate benefits and second, the types of potential benefits available. This section further includes quotes about claimants feeling of ownership and when benefits aren't available from the land, other settlement options.

This section, “claimant benefit from land” addresses:

1. Difficulty Determining and Implementing Benefits
2. Types of Potential Benefits
3. The Feeling of Ownership
4. Other Options— Alternative Land and Excision

### ***1. Difficulty Determining and Implementing Benefits***

There are two components to achieving claimant benefit from the land; first, determining what the benefits should be, and second, putting them into place. Each of these has been difficult and respondents below described the lack of tangible benefits. They discussed conflicting ideas about the level of appropriate benefits and the lack of strategy around putting benefits into place.

Claimants were at times frustrated and confused about what the benefits of being a protected area land owner actually were. Other stakeholders commonly called the claimants “beneficiaries” although few benefits were coming to claimants. The lack of implementation of benefits made claimants question why other stakeholders used the language of “beneficiaries” since the term was not accurate.

*Right now they (other stakeholders) say the people are beneficiaries of the area but what do we benefit? That is the question, what do we benefit? Individuals, what do we benefit, am I going to benefit? With what? Besides selling this craft, what is it I'm going to gain? So if they say you are the beneficiary of the area what do they mean? We have to understand that. Because by building a hole that does not mean it's going to fit for my house, you see what I mean? . . . Up till now I am not clear what they mean about us being the beneficiaries. Are we the beneficiaries because we receive a title deed for the area? But what is it that we are gaining? Because the people are hungry outside [the park] and nothing is coming to their home. Why do they say we are the beneficiaries? (R4\_1, claimant)*

When benefits were not implemented, some participants felt that land restitution was not changing the lives of claimants or making a contribution to the goals of land reform.

*[Claimants] are faced with many challenges: unemployment, starvation, poverty, children are not attending schools, schools are very far, health facilities are not near by. Development, the entire community is not developing because there doesn't seem to be anyone who has come up with a strategy so [claimants] can see that the restitution of the land is benefiting them. Now if that is going to be the trend throughout the province and throughout the country then I am afraid that some of us would prefer to pack and go because what contribution could we claim to have made? (R1, conservation manager)*

During debates about potential benefits, participants questioned whether post-settlement benefits coming from the land for claimants would be comparable to the benefits they received when living on the land before removal. The reality is that the benefits from conservation will be quite different from former land uses and it can be difficult to find comparable replacements of former uses.

*In terms of restitution, are we giving them back not everything exactly the same as it was but are we giving back in kind the level of benefits that they had before? . . . It doesn't have to be exactly the same benefits but is it the same quality and scope of benefits that they had before? Or is it much reduced because of whatever the circumstances are surrounding the protected area? (R3, conservation manager)*

When claimants were removed a certain level of benefits were lost. The conservation agency and claimants may have differing views on adequately replacing these benefits. In one claim, stakeholders debated the appropriate payment to claimants from tourist gate fees in the park. In this instance the government negotiated its position through the terms of terminable leases. However the claimants have lost something forever.

*There has to be . . . very real benefits. Like I had a fight, [EKZNW] wanted to give [claimants] ten years of gate levies. I mean, that's crazy. And then I said, no, it must be for perpetuity. And I eventually managed to negotiate it up to 75 years, but still, that to me was strange because it should have been in perpetuity because that was the sacrifice that the people had made. It wasn't ended. . . . And so I would say that that was a bit of a compromise. The government . . . they think in terms of these long leases at the most. I mean, the most you can get from the government is a 99 year lease if you're a commercial developer. And so they were sort of thinking in terms of time periods and they need to reorganize themselves to really respect the depth of sacrifice that people have made, to make decisions and give people real rights in respect of those sorts of issues. (R25, lawyer)*

Given the loss of land for inhabitation, cultivation, grazing, and harvesting lost through the removal, there is a need for tangible compensation for claimants through restitution.

*There must be a way, a well-defined way that if that you have been moved from this land to here. . . you will be compensated, you will benefit one, two, three. . . The people previously benefited as an entire family. . . If you had some area with madumbe or banana you could straight go there and get that and cook it at your house. So now that I'm out what is it that I get, can I go somewhere else like the shop, can I go and get hundred rand and cook at my house? (R15, local non-claimant)*

Ultimately, the implementation of the protected area land restitution must bring enduring benefits to replace what claimants lost.

*There must be serious consideration given to sustainable benefits and not once-off benefits. They should form the major part of any agreement so that at the end of the day you've signed an agreement the terms of which the community that's made the sacrifice has real benefits that can be handed down in some sort of way from sort of generation to generation. And that's the real challenge. (R25, lawyer)*

## **2. Types of Potential Benefits**

The land and its designation narrows the type of benefits claimants may receive, for example, farming is not an option. Given the protected area designation, the next step is determining the related economic opportunities. How can claimants benefit and best use of the land under the conditions outlined in the settlement agreement? In protected area claims, the main economic activity permitted is tourism development. Tourism development is the economic driver attached by the government to most protected areas in South Africa, inside and outside of claimed land. Tourism related benefits for claimants include tourism development rights (such as building lodges), a share in private tourism development, leasing land to tourism operators, employment in the tourism sector, and receiving a portion of tourist gate fees. However, respondents also discussed economic activities not tied to tourism. Other benefits discussed include: claimants receiving rent from the state for the use of the land as a protected area, employment in conservation management, receiving a portion of profits from game sales, and accessing the land for resource harvesting.



Participants often divided benefits into two types: passive and active benefits. Passive benefits mean claimants take no action, incur no cost, and experience no risk; rather they receive some payment for simply being the landowners. These benefits would include receiving rent from the state, lease payments from tourism operators, or receiving a portion of tourist gate fees. Active benefits are one where claimants are more involved and may incur some risk. For example claimants take part in managing a tourism operation, hold equity in tourism developments, or are employed in conservation or tourism.

Participants were often in the process of discussing the pros and cons of different types of benefits. Respondents discussed claimant benefits within the framework laid out in the settlement agreement but in much more detail. Specifically, respondents mentioned rent and leases from the conservation agency or commercial investors, benefits from lodges and developments, employment, owning game, and access.

### Rent and Leases

Rent and leases paid by a conservation agency or tourism operator to claimants are one way claimants can benefit from being land owners. The Mbila and Mabaso settlements included a clause that “8% of the annual gross turnover generated by the operation by the Authority of commercial activities on the claimed land will be paid to the Trust” (DLA 2001a & DLA 2001b). This payment is considered a passive benefit, a benefit that comes to the claimants simply because they are landowners. Leases paid by conservation agencies or private tourism operators could be flat payments or a percentage of income. Rent paid by a conservation agency is more complicated because of how the agencies are funded and respondents raised questions about where the payments would come from.

Stakeholders debated the issue of how claimants could benefit from private tourism operations on the claimed land. From these operations, claimants could receive flat lease payments or percentage of turnover of the profits. This respondent concluded that a flat payment

would be better and explains how this relationship between the claimants and tourism operator could work.

*The investor is supposed to pay rentals . . . These rentals are much better [than turnover]. That's what we want. If we say you pay 50,000, whether you make money or you don't make money, you have to pay 50,000, then we talk about the escalation PPI index or the following year do we move 10,000 or 5,000 extra. . . . How they generate those rentals is up to them because they are using our land. If you use my shop what you are selling is not my problem. As long as you abide to the regulations that you cannot sell liquor, whatever, whatever, but you'll abide. What you are selling is not my problem. What I want, I want my 5,000 end of the month. (R28, restitution manager)*

A rental payment to claimants is a steady benefit that claimants don't need to do extra work to receive. Some participants thought that this "given" benefit was an appropriate and necessary benefit for claimants whose land is required to be used for conservation. However a rental payment concerns conservation agencies because it would increase their costs.

*The notion of a rental is if this land is guaranteed for conservation purposes and the claimants are locked in for a particular land use, for time immemorial, for as long as it's proclaimed as a game reserve, then. . . the community as a landowner would need to derive some benefit. And that benefit could be a lease or it could be a pro-rated payment. NCS was really skeptical about that in terms of increasing the costs. And what I was saying and what the Commission was saying, is that the rental is a vital source of passive income. It's literally something that the community trust can budget, project, and plan around. (R29, restitution manager)*

Increasing costs for conservation agencies through paying rent to claimants is a valid concern in South Africa where conservation budgets are tight. If the conservation agency needs to pay rent for the land now owned by claimants then there may be a need for increased subsidy of the agency by the state.

*We (conservation agency) are only making 34 percent or so [of our budget]. 66 percent of our 2002 budget was subsidized by the state. So [34 percent] is all that we're making from our business side, our commercial side. . . . If you reduce that further by paying rent money out to communities, you're not using it to run the organization, then you're not going to keep everything afloat. You're going to have to increase the government subsidy. (R14, conservation manager)*

### Benefits from Lodges and Developments

Another potential benefit for claimants is that of owning and operating lodges on their land or partnering with private investors to develop together. These are activities strategies that

involve claimants investing time and money into projects. The amount of ownership and decision making claimants might have in these projects varies. In the Greater St. Lucia Wetlands Park, there is a large scale investment strategy driven by the GSLWPA for developing the Park which includes the land of numerous claimants. The GSLWPA is soliciting companies nationally and internationally to build the tourism infrastructure. In this scenario communities can benefit but have little decision-making power and it is difficult for claimants to be involved, at least initially. Other options could include full ownership and operation of developments.

One vision a group of claimants had for their land was building a high end lodge to bring revenue to the community.

*We want to build something that is maybe going to be number one in South Africa, not number two. In the lodge we are saying we want a high lodge where a person can pay maybe 2,000 or 3,000 rand a night but when he's there he feels it's worthwhile to pay 3,000 rand because the place is going to be so beautiful like heaven. Yeah, that's what we think of. (R10, claimant)*

To accomplish building high end lodges or other tourism infrastructure, claimant trusts may need to engage with the private sector. However, for claimants with little if any previous experience, establishing a public company and working with investors is challenging and takes time.

*We (the claimant trust) have to see that the nature generates income or makes economy for the people who were forcefully removed, that is upon our shoulders. . . . When we were busy with negotiations during the settlement, we proposed that the community open the public company which will complete that role . . . so that we invite the investors from other countries to invest money if they are interested in investing on the nature here, building lodges, hotels, and other things. But we are still fighting, we are battling towards that. (R31, claimant)*

Although development in the Greater St. Lucia Wetlands Park is being driven by the GSLWPA, private investors must have “empowerment partners” as required in the contract with the Park. This requirement ensures that claimants will have a relationship with tourism operators and can benefit from the tourism development.

*There's a mandatory kind of requirement that any developer would have to have an empowerment partner. . . . That's how the tourism side of it will provide returns. (R12, restitution consultant)*

Having the GSLWPA driving tourism development of the park has pros and cons. Although groups with claimed land in the Greater St. Lucia Wetland Park may have little decision-making power now, in the future, for example ten years from now, claimants could benefit greatly from the investment the GSWPA is facilitating in the area. However, these benefits won't be recognized immediately and during the interim claimants lack decision making power.

*[The claimants]. . . are the managing partners in the tourism development in that area. Which means that the Authority or and/or Department will make sure that they are sort of 50% shareholders of the tourism development in that area. They are very well positioned in terms of the access roads, so in ten years' time when there's an entrance gate at that point it will be on [claimant-owned] land and they'll be the key beneficiaries of that. And that's the strength of that deal, as the Authority starts to perform so the communities can start development. The weakness of the deal is that the communities have to work for the Authority to start performing and so the business is not in their hands. (R9, NGO)*

The lack of decision making power for claimant in the short term is frustrating for claimants and some of the other stakeholders. But some participants argued that in the situation of the Greater St. Lucia Wetlands Park, it's important to have a large scale tourism development plan that claimants can fit into rather than having piecemeal development.

*I think it is the right thing in the long term, I have frustration in the short term, sticking to the point that there must be one development process for that Park. All the land is going to be developed under one plan, now that's when it can work. Then you can have a situation where you can have a number of landowners, beneficial landowners really. We can have one common management approach and one common development approach. And that is the trick and that is the formula with the Authority. I think it's a solid structure and a solid formula. What they've got to get right is their actual application of that. And it is the birthright of many people that have been moved off that park who are dirt poor. . . And they have every right to be benefiting from that. (R9, NGO)*

### Employment

Employment in conservation or tourism activities on the claimed land is another way for claimants to benefit. Employment is an important way for individual claimants to benefit from being land owners in contrast to other benefits that are geared towards benefiting the claimant group as a whole. Employment of claimants in activities on the claimed land could be a

stipulation of the settlement or post-settlement agreements. However employment can be challenging when there is a lack of job skills and /or job opportunities.

Employment opportunities available on claimed land are one potential benefit for claimants. The type and number of jobs varies somewhat from area to area.

*Building of the lodge, bringing the tourists in, money from hunting. . . guards from the area, there are job opportunities. If they need to clear the fence for controlled burnings, all those things, [claimants] will be doing it. They will benefit like others here, you know? They'll be having a small place where they can work. (R18, conservation manager)*

To facilitate employment opportunities, claimant trusts can make agreements with businesses to employ claimants. These agreements partly fulfill the “empowerment partner” requirement that developers have in the Greater St. Lucia Wetlands Park. However, if job skills don’t exist among claimants then the employers could look elsewhere, bypassing the claimants.

*Another big benefit for the [claimants] from the businessmen is when you come and put up your business there then automatically the [claimants] become a mandated partner. And in those businesses the priority will be for our people to be employed there in terms of their different skills. If they don't find the skills from our people then they can go out and get anyone that can fill that position. (R10, claimant)*

And although the empowerment partner requirement facilitates employment of claimants, there are challenges in mandating a partnership between businesses and claimants. If it is not convenient for a private partner to work with a claimant group, the requirement of employment opportunities for claimants could be deliberately overlooked. Thus agreements and requirements for including and employing claimants need to be written into policy and then monitored to ensure the requirement is fulfilled.

Another challenge to employment for claimants is simply the lack of jobs. Additionally, some jobs, like law enforcement, don’t usually employ local people because of the potential for conflicts of interest.

*The key issue is that there's not going to be much jobs available and that is going to create another problem. I see more cash than more job opportunities, because you can get money from game sales or leases, or in a number of ways. But employment would not be there as much as people would expect. That is the biggest challenge because people want jobs. And some fields don't necessarily allow you to employ local law enforcement,*

*which is the majority of our protected areas. That will be an issue. Local employment would not necessarily serve the purpose because of the conflict of interest. (R13, conservation manager)*

### Owning Game

An additional form of passive income for claimants is revenue through game sales. In South African parks, wild game are often sold or auctioned off live to other parks that are establishing new populations or promoting genetic diversity in their current populations. Rhinos, elephants, impalas and other species are sold from a park when their populations are stable. Respondents discussed claimant ownership of game and the potential revenue for claimants from game sales.

Game sales are a common practice in South African parks and can benefit a claimants through the revenue they produce.

*In any game reserve there has to be a natural rate of off-take. Because once you have your seed population, that population escalates and you have to, as a conservation strategy, to cull. And that off-take or a portion of that off-take, needs to be an income stream to the claimant trust over the lifespan of that game reserve. It's one passive income to the community. The community would do nothing. It allows them to build up capital base or a piggy bank of income that can be redistributed to the community. (R29, restitution manager)*

### Access

Another benefit for claimants is accessing the land for natural resource harvesting. Access is important both economically and culturally and is normally practiced through resource harvesting and visiting gravesites. The settlement agreements did not mention resource harvesting; it may be that this topic is more appropriate for post-settlement agreements. However the settlements do acknowledge that, "burial sites within the Claimed Land have a cultural and religious significance to the Claimant Community and reasonable orderly access to these sites will not be denied by the Authority or its legal successor. It is further noted that the practice of burying late Amakhosi at sacred sites is acknowledged and that the need to afford these sites special protection is noted by the Authority" (DLA 2001a & DLA 2001b). Although the

settlements address gravesites but not natural resource harvesting, respondents addressed both of these activities. As respondents discussed below, in these claims access was controlled by the conservation agency still managing the area. Some respondents accepted this while others took issue with it.

Even after the land claim is settled, claimant's access to resource harvesting on the claimed land is limited by permits from the conservation agency. Although harvesting levels are now determined by the conservation agency, by negotiating post-settlement management agreements in the future, claimants should have a voice in the management of natural resource harvesting on the claimed land.

*People are allowed to go there but they have to have permits, they are given permits and on the permits it is written the kind of resources that people can harvest. They can't just go and harvest anything that they like. (R16, claimant)*

Access to the land for natural resource harvesting can be an important economic activity for claimants. When job opportunities are limited, harvesting provides an alternative benefit. In the case described below, claimants accepted regulations and cooperated with the conservation agency to harvest resources in the claimed land.

*We will also have access to [the claimed land] even if it's well developed, just to harvest some ncama and all those things. Because some people will need those things because not everyone is going to work in that area, very few people are going to work so others are going to sell these [harvested] things to tourists so they will get money. . . And the NCS is willing to bend... Here at Sodwana, there are the sea lice, we are used to fishing with the sea lice. So the NCS said to the people that you must not exceed 5 sea lice if you want to fish. And people, because they are willing to bend, they do so, and we cooperate with the NCS. (R4\_1, claimant)*

Claimants may accept controlled and permitted access for harvesting on their claimed land when they see it ensures sustainable levels of harvesting.

*We can not go there simply to do anything like cutting ilala except by getting a permit, harvesting whatever we like to harvest there, we have to get a permit. Which is right because it controls everything rather than saying to the community go and harvest because one day they can cut all ilala and finish it up. So to have a controlled use is fine. (R6, claimant)*

However, claimants and the conservation agency don't always agree on harvesting levels and restrictions. In one post-settlement management agreement between claimants and the conservation agency, claimants were not happy about control by the conservation agency and disagreed about access and harvesting. This case pointed out the importance of claimants' participation in negotiating and determining details of post-settlement management agreements. If, after settlement, claimants are not participating in decision making, conflicts can occur and agreements will ultimately need to be renegotiated.

*There are a lot of things we are not happy about. One of the things [the management agreement] says is the community will have access to the natural resources. But when we send our people to cut the natural resources, ncama, a grass that is utilized by the community, they are saying now that it is not specified in the agreement that we have the right to cut the natural resources. They say it says we will have access, it goes there to the playing with words. What does it mean to say the community will have an access? To do what? So it seems now as if we need to renegotiate the agreement or there must be an additional document where we must try to reach agreement about access. Because people are not being allowed to cut ncama in the park. (R11, claimant)*

Claimants and conservation agencies may also disagree about levels of access to the land to visit gravesites. Access into protected areas is usually restricted by fences and once inside claimants must be accompanied by game guards to protect them from animals. This means that providing access for claimants takes willingness and commitment from conservation agencies. If conservation agencies don't facilitate claimants' access to the claimed land, the claimants' right of access is essentially lost.

*There should be a way of helping [claimants] to get there to see their graves because that's their conviction and beliefs. So, in fact it's not allowed, if I can say it that way. It's controlled. . . you have to follow long bureaucratic lines to go there, it's tiring, so they don't get there. It's a sophisticated way of denying their right of access to the place. And then they will never even promote [visits to gravesites] . . . That's my view. I don't know. Maybe for them it's enough, they feel they've done enough. But for me as a person really, on the other side of the story I feel differently. (R15, local non-claimant)*

Although some claimants above expressed understanding of sustainable harvesting and willingness to cooperate with the conservation agency, other participants expressed concern about claimant resource harvesting impacting the protected area, particularly for commercial harvesting.



*There's been no assessment of, for example, of what's the sustainable level of harvesting of native plants. . . That hasn't been done yet. . . . One would hope that whatever they do, that it's a scientifically based approach. And my big fear . . . at the moment is that you have communities moving from subsistence to commercial, basically levels of resource-use and fishing on the lake is the classic example of that. It's not for domestic consumption only, it's to sell. (R12, restitution consultant)*

### **3. The Feeling of Ownership**

Apart from the economic benefits that might come from ownership, there is another important and less tangible aspect to ownership. The simple feeling of ownership is a benefit that participants discussed. Respondents below talked about the feeling and even “status” of claimants being land owners. Respondents also mentioned how the feeling of ownership changed claimants’ actions in regards to the land.

For claimants, simply owning land is an achievement and may bring them new status.

*Some people see the benefit of it, some don't, but to own a piece of land is a status. You know that you've got a piece of land, it's like having a car. You could point at it and say that's my car. And you could do whatever you like on that piece of land. You understand? It's a status. In our cultures, African, there is high regard for a piece of land, irrespective whether it's a protected area or not. The fact that you've got that piece of land, it belongs to you, and because in the past it was yours and you've got it back, you know, it's a great achievement. (R23, conservation manager)*

Gaining ownership of land also gives claimants something in perpetuity in contrast to financial compensation.

*The Land Claims Commission wants to avoid awarding that type of decision like at Bhangazi (financial compensation), they want to give a title deed. Because . . . we owe it to them to try to give them something that will be there for future generations so they can say yes, we have something because we have the title deed. (R30, conservation manager)*

Land ownership by claimants may also be good for the land itself when claimants feel an increased sense of responsibility for management the area.

*As soon as people have ownership in an area and its real ownership, it's not arbitrary ownership, then they start to take responsibility and to date, our communities bordering our protected areas have no responsibility because they have no ownership. We suffer quite big losses in terms of biodiversity as a consequence. (R3, conservation manager)*

The increased sense of responsibility that comes with land ownership can change claimants’ behavior and treatment of the land.

*(Translation) [He] is saying that the other thing is that before these agreements, people from the community were taken things from nature, destroying nature, and killing animals. But he says the reason was that people were just destroying just because they weren't getting anything from the nature. The people who were benefiting was the state. . . But now because people have been workshopped and they have been promised that they will be benefiting from the nature. Even now, even before fencing they are no more destroying because now they know that this belongs to them. (R16, claimant)*

#### **4. Other Options— Alternative Land and Excision**

Whenever possible land restitution is carried out through restoration of the land from which the claimants were dispossessed. However, restitution may also be completed with alternative land, payment of compensation<sup>24</sup>, a variety of types of government assistance, or a combination of these (Republic of South Africa Parliament 1994). Thus, if adequate benefits are not available for protected area claimants through conservation management and tourism on their original land, there are other options. Excision of a piece of the claimed protected area from the park to be used for cultivation, inhabitation, etc is not mentioned in the Act but was addressed by respondents. Below respondents discussed the options of alternative land, excision, and a settlement that would include a title to a portion of the land with additional development funds.

The option of alternative land for protected area claimants may not be a viable option when the available land is far away from claimants' current residence.

*And if they can't go back, what else? So again we will start talking about the second option in terms of an alternative land . . . we can buy it so that at least [claimants] can do whatever that they want to do on that particular land. But also that's a problem again, because we can't find land. I mean, the population in South Africa is so high and there is that problem that we can't find land. If you find land, sometimes you find it very far from wherever they are. And now they are attached to their work and space and all the stuff. But now you have to take them 100 and something kilometers, it is going to be a problem for them as well because they have got schools there, they have got employment. . . they have friends and relatives and all that. So that option also becomes very problematic. (R17, restitution manager)*

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<sup>24</sup> The option of financial compensation is a large topic and is not discussed in depth here. In general, respondents were against financial compensation because it did not change the pattern of land distribution in the country. However some claimants who have not yet settled are strongly in favor of financial compensation.

One claim settlement involved a discussion of excising a piece of the park for the claimants to use for other purposes. Due to extensive opposition from environmental groups this excision didn't occur. However, one respondent commented that without granting the excision and thus access to the river for the claimants, the settlement was not adequate.

*With Mbangweni . . . the issue of excision people, wanted a piece of their land to be excised and for them to plow. And it made sense. When the park was created the river, which is a source of their livelihood, was fenced in. Now where do you expect people to live? And so part of the negotiation means accessing the river, otherwise you leave those people without water. . . Conservation Service provided some boreholes, a couple of those which break down now and then. And they think that they have done enough. The problem is it's more than water that's in the river. It's the vegetation, it's the fact that the soil is much more fertile. (R2, former conservation manager)*

There is room in the protected area settlement guidelines for pursuing a combination of settlement strategies. In land without much tourism potential, rather than give title, it could work to give the claimants rights to develop a small area in the park and money to develop the area where they currently live.

*If you say to a community that you are giving them a title of 10,000 hectares, in a claim where there will be no measure of tourism, it is only a conservation area. What do you mean? What benefits are they going to get? So our idea is that, okay, let's not give them the lands. They will keep a selected area for development, you give them rights, not even ownership but rights to use 12 hectares or 10 hectares for tourism development. Then you take the other money, you develop where they are. You can start a big pilot project for agriculture. You can develop where they are, where they currently stay, their houses or whatever. (R28, restitution manager)*

## **II. Claimant Participation in Decision Making**

*More than anything else, that community must play a role in the management of that park. They must feel that the protected area is theirs. (R2, former conservation manager)*

*The restitution process has declared that . . . the land that is claimed belongs to [claimants], and the major challenge is, and so what? What does it mean? The country has proclaimed the land, the land is being managed for them not with them, they don't see any tangible benefits from the land . . . Does it really go any different between what was the case and what is the case now? My argument is that we need to involve communities in the management of biodiversity, we as managers of biodiversity. But the question is, at what level do we involve them? Do we employ them as laborers as they are employed at the moment? My argument is that we need them in the management structures. Are they qualified, trained for that? They're not, who must capacitate them? (R1, conservation manager)*

*We are the owners of this place so it's upon us to look after this place. (R32, claimant)*

Claimant participation in decision making is a second tangible benefit of protected area ownership. And the difficulty of defining and achieving this participation and consultation in management and decision making poses another challenge to implementation. The respondents above pointed out the importance of claimant participation in park management and made the connection between that participation and a feeling of ownership. Other respondents agreed that the settlement terms of participation, consultation, and empowerment, as defined above, needed to be fulfilled. The challenges arose in determining the level at which claimant participation and consultation should occur and how to achieve participation at that level. Some questions about how to achieve claimant participation revolved around claimants' capacity to participate and how that capacity could be increased.

Currently the protected area claims in KwaZulu-Natal are still managed by conservation authorities. Claimants were sometime brought into discussions about future options for participation but there is little current participation in management and decision making. One claimant even felt participation wasn't happening at all and said:

*[The conservation authorities] say they will plan with the people, in consultation with the people, but that's not what they are doing in practice. . . . We've learned that this system of participation is called participation but is not participation. (R15, local non-claimant)*

Not all respondents shared this view of claimant participation but the quote does point out that for some, there is still a long ways to go in achieving real participation.

This section, "claimant participation in decision making," addresses:

1. The Importance of Claimant Participation
2. What is the Appropriate Level of Participation?
3. A Range of Ways to Achieve Claimant Participation
4. Potential Structures for Claimant Participation
5. Obstacles to Claimant Participation

## ***1. The Importance of Claimant Participation***

Claimant participation in decision making is important if are going to have a real sense of land ownership. The quotes at the beginning of this section demonstrate the connection between participation and a feeling of ownership. Respondents below discussed the importance of claimant participation and reference avoiding conflict between claimants and government, the need for claimants to understand the reasoning behind management actions, and involvement of claimants in conservation management versus tourism.

Although the claimants don't live on the restituted protected area, they are often close neighbors and have lived in the area their entire lives. Their familiarity with the area is an additional reason for claimants to be participating with other management entities. If claimants feel that they have no control over their land *after* gaining ownership, there is a potential for a situation like the land debacle in Zimbabwe to occur.

*That man [name withheld], is staying far away from here, he's not staying around here. So he doesn't know the procedures for everything around the area. But when he goes up in the sky he can photograph the area but then he will go back and who is going to see to it? The people who are staying around here. . . . That is why we want to make sure there is not any boundary between us, KZN Wildlife, LSDI, Trust, everyone must have a say. . . . We don't want to see the area being controlled by other people because we don't want the second Zimbabwe in South Africa, that is the case. (R4\_1, claimant)*

It is also important for claimants to be involved in decision making so they understand the reasons for management actions such as putting up a fence.

*In the management of the park, be involved with as many people of that area as possible. . . If I'm involved in the park I'm not resistant to putting up the fences because I know it's not for boundary purposes, it's just for the dangerous animals not to harm people. And also to create that area that once tourists are getting in they know that now they are in the park area so they can start exercising what they have come there for. So it's not something that is boundary based, there's something about how the park is managed and that knowledge should get to the people, they must understand. They must understand the ownership of their land first. They must understand that no matter what happens that the land belongs to them. They still own it and it's theirs. (R19, NGO)*

Although the discussion of benefits, often through tourism, is an important one, claimant involvement in conservation activities may be more important for giving claimants a real sense of

land ownership.

*I feel is lot of the [settlement] focus is on money and very little on real ownership. It's not just about capital return, it's about things like a sense of ownership, a sense of pride. And communities move in that direction when they're involved in conservation management as opposed to tourism. (R12, restitution consultant)*

## **2. What is the Appropriate Level of Participation?**

The first challenge to achieving claimant participation is determining the appropriate ways for claimants and other management entities to engage with each other. Respondents commented on a variety of ways claimants could participate in the park management. Responses ranged from claimants being consulted during decision making to claimants taking over and managing all aspects of the park. There were disagreements among respondents about the appropriate level of claimant participation. These disagreements are represented in the next two sections.

These first two respondents demonstrated contrasting opinions about whether claimants would ever be able take over full management responsibility.

*I don't think that the government will agree to [claimants] taking over the whole affair of the protected area, it won't happen that way. (R2, former conservation manager)*

In contrast, this respondent commented that conservation authorities can't hold onto people's land indefinitely, implying that in the future, claimants might take full management responsibility. He felt that participation meant that claimants needed to be trained to take over conservation management jobs.

*We should, where possible, provide some capacitation so that some of these guys will take over some of our (conservation authority) functions. I mean some of us must be prepared to be replaced by the owners of the land. We can't hold onto the people's land indefinitely. (R1, conservation manager)*

## **3. A Range of Ways to Achieve Claimant Participation**

Claimants may or may not take over full management responsibility of conservation or tourism activities. However, along a spectrum of responsibility level, there are a range of ways

claimants can be involved in management and decision making. The following respondents discussed the kinds of decisions they felt the claimant trust should be involved in regarding participation in management and participation in tourism development.

### Participation in Management

Claimant participation in management could involve claimants taking part in a variety of management decisions. Respondents mentioned claimant involvement in decisions regarding land management, the introduction and sale of game, and tourism development and fees. Participants again emphasized the connection between involvement in management and a sense of ownership.

Decisions about developments, regulations, and future land use are often important to claimants. As holders of the land title, it is important that the claimant trust understand and participate in the decisions affecting their land. In the decision making process there is a need for claimants and conservation authorities to work together.

*When you think about decision-making, what kinds of decisions do you think the Trust should be involved in? (Interviewer)*

*I think policy formulations, decision makings, discussing of a lot of things like anything that can take place there development wise, anything that can change the nature or the system of the land as it is now. . . Policies for controlling the land, policies for running the development in the area, policies for let's say in future we need agricultural land, those are the things we need to sit down to see if we can come up with such land then we deal with it. . . We need to talk about it because even ourselves, we can not simply say we are putting this there because it is our land, no we can't do that. We have to sit down with [conservation authorities] and talk about it and see what we are thinking to do there, is it going to be viable or not. Those of the kinds of things we have to look at. (R6, claimant)*

The claimant trust may also be involved in determining tourist fees, game sales, and building infrastructure.

*(Translation) The decision making the trust has to be involved in is like when some people come to camp in the area, the trust has to know, and know how much those people have been charged. And they even have to be involved in deciding the prices those people are to be charged. And also if there are animals that are going to be sold, you know sometimes animals are auctioned, if there are animals that are going to be taken*

*from here to be sold, the Trust has to be involved in that and has to know how much money has been generated. And also if there are some things that are going to be constructed in the area, the Trust also has to be involved. (R16\_2, claimant)*

### Participation in Tourism Development

Participants also spoke specifically about claimant participation in tourism development. Discussions centered around the appropriate role claimants should have in choosing and working with tourism developers for their land. Respondents disagreed about when and how claimants should be involved. This discussion arose in part from the settlement agreements in the Greater St. Lucia Wetlands Park that give the GSLWPA sole responsibility for handling tourism development. In other South African claims, claimants have been given more responsibility for tourism development.

Claimants expressed concern that if others make decisions for them, then claimants won't be represented and won't gain access to benefits. If claimant trusts do not have a role in decision making, particularly regarding tourism development, they won't feel part of it and may fight against it.

*(Translation) But what I am suggesting is . . . let [claimants] have a sufficient say in the area so they are aware of their land. Because if they do not participate some people are going to take a decision on their behalf and they won't get anything after that. They must have a hand in their land because that is what I believe, this is our land, that is the case, and no one disagrees about that. So in the end I must have a right, that is it. But because we think differently, some of the other trusts said, no, let us give everything to these people to develop the area, let us wait for what they are going to give to us. But when the time goes on you might notice that these people will fight against the development because they were not a part of it. (R4\_2, claimant)*

When engaging in tourism operation partnerships, claimants should have the choice of who to partner with, whether it is a conservation agency or the private sector.

*Now if that particular area is not making any money and Inkosi says return my land to me I'll find a partner, not Ezemvelo, I want a different partner who is going to mean business. Now what if the land claimants decide, as they do in other areas, give us the opportunity to choose a partner. Give us that opportunity for that because we have a title deed. . . . That is very fair. I mean I can't continue working with you as a partner if I see that you are failing our business, I must have the choice of a different partner. Once your term of office expires I must get somebody else on board. In this case they can't do*



*that. And you begin to say, what is it worth to have your land given back to you? Is it worth anything? (R1, conservation manager)*

In tourism development on their land, claimants should be involved in the planning. For example, if claimants choose to partner with the private sector for tourism development, they should also have the choice of which private sector partner. If claimants are not adequately involved in the tourism investment and development process they are more likely to end up in poorly conceived deals with private partners. In negotiating tourism investment it's also important that claimants have knowledgeable people to work with and represent them.

*[Claimants] are not involved in the [tourism development] planning process. . . One of our recommendations is that they should join the committees that do different plans for different sections of the park. . . . But our concern was that they're not being involved at a sufficiently early stage to have any influence over the planning process. So it's been done already, in other words, we will develop these three sites and this is what we're going to develop and they've not been involved at all in the selection of who will be their joint venture partner. We suggested that the Authority involve them at a much earlier stage, much, much earlier, even if it's on a cost-sharing basis. . . . And the claimants would share the cost of the consultants whom they involved in the process. . . To express their opinions they can appoint their own experts to represent them so a claimant trust could appoint me to go and sit in those meetings on their behalf so that they're not completely overwhelmed by what's going on. We think it's essential that they have that. . . At the moment they're often at the mercy of the joint venture partner and the result is that they end up in bad deals. (R22, restitution consultant)*

In contrast to the excerpt above, another respondent said there in no way the claimants can be involved in the tourism development process until after the investors are chosen. He discussed choosing tourism investors in the Greater St. Lucia where investors were submitting bids in November 2003. He talked about the way investors are chosen and when it would be appropriate to involve claimants. He concluded that investors are fragile and it's important that claimants don't scare them from investing in the area.

*In no ways can you get the local community to engage with the investor before the investor is selected. The only thing we do is make the local communities understand that there is a process of investment going on which is going to come with investor A or investor C. Investor C will be selected firstly on the basis of his or her environmental management plan that describes very clearly how he or she is going to manage the environment. Two, the finances as I explained to you that's a Treasury function. The third thing is around the empowerment, empowerment comes with three things, jobs, business opportunities, and training. Recognizing that people residing along the Park they don't have adequate skills to participate fully in the new-coming investment. Once*

*you know that so much jobs of this nature are available then you begin to train people around those particular jobs. But what I'm saying here is that in no ways can we begin to involve the local communities in the hunt for investors. What you do is you make the communities aware that the investor will come and will come under this particular framework, so that's the way it will go. Once the investor is announced, then the negotiations between the investor, between the preferred investor, and the communities begins. . . . Then the participation and the influence of the communities starts, but again I'll say it's important that the communities don't scare these investors away, the investors are very fragile. (R21, conservation manager)*

#### **4. Potential Structures for Claimant Participation**

As described above, there are a range of decisions that claimants could be involved in. There are also a range of structures claimants can be incorporated into to contribute to decision making. The settlement agreements specifically mention claimant involvement in management structures and processes. In the Greater St. Lucia, claimant participation in a land owners association is also included in settlement agreements. The agreements state that claimants will form, “an association with other land claimants in the GSLWP within 24 months of the signing of this agreement” and that this “Claimant Community association shall be a member of the wider GSLWP land owners association to be formed as soon as possible after the signing of the agreement” (DLA 2001a & DLA 2001b). The stated purpose of the land owners association is “to enable effective representation on the GSLWP governance structure” (DLA 2001a & DLA 2001b). The settlement agreement further states that the land owners association will be involved in, “conducive investment and economic development, co-operative environmental management, monitoring of the effective implementation of principles embedded in this agreement as well as coordinated interaction with other stakeholders and parties with interests in the GSLWP” (DLA 2001a & DLA 2001b). The land owners association has the potential to fill an important role in implementation however in December 2003, over two years after settlement, the association was not in place. The excerpts below show participants’ thoughts about the need for the landowners association or something like it to be in place.

In the case of a larger park with numerous claims like the Greater St. Lucia, there is a particular need for a management board like the land owners association to be formed. At the time of this study there was an absence of a planning and management body where the claimant trust and the two conservation authorities could come together to make decisions. The body had not been formed, nor had it been determined how it would function and contribute to decision making.

*We are behind, we don't sit with the so called planning and management, we just are trustees. There's no body where we are meeting, there's no integration, nothing. There's no body where we are doing things together. . . I believe we need a body, we need to be integrated, where we can do things together, we can start functioning together. And also if the trust is represented in that body then we can say, no we don't see it this way, we see it this way. . . I don't see us (claimant trust, GSWPA, EKZNW) sitting in a body where we all come together, there's no integration, I believe there should be some integration, where we can all prepare together when it comes to decision-making. (R11, claimant)*

*For these communities. . . your land is now being returned to you and you are now the landowners. But they should also exercise their rights to participate in decision-making. . . There should be a management board tasked with overseeing the management of the Park. But how exactly such a board can be involved isn't clear. But we can have representatives from all these communities. But what that exactly means still is not clear but it's a type of body that would meet for such purposes so people could take part in management issues. Because today, as you well know, the management is very technical and you need certain training to be able to take part in some of the very complicated processes. (R30, conservation manager)*

## **5. Obstacles to Achieving Claimant Participation in Decision Making**

Numerous obstacles exist to achieving claimant participation in decision making. These obstacles are partly why claimant participation, for example through the formation of the land owners association, was not yet implemented. These obstacles can be significant but not insurmountable. Obstacles discussed here include claimant and conservation authority relationship history, claimant comfort and cost, claimant power in negotiation, and capacity among claimants and conservation authorities to achieve claimant participation.

### Claimant and Conservation Authority Relationship History

The turbulent relationship history between claimants and conservation authorities can be an obstacle to working together to achieve claimant participation in decision making. Claimants and/or conservation authorities may carry old animosities with them that inhibit working together. The excerpts demonstrate some of the implications of this relationship history.

Claimants often associate the conservation authority with their removal and subsequent exclusion from the protected area. This association causes tensions in present-day negotiations.

*I think one of the challenges that we are having regarding conservation claims is the trust felt from the [claimants]. Because the history, in terms of them working with those people of conservation, they still view them as the people who were really affecting them in terms of their removals. . . . And [claimants] have been living like that, the conservation area is down there and that's it. Only the tourists come, that's it, nobody else. When you talk to an old person, he will tell that he has not set his foot in there because the conservation says, no, no, no, if you come here, you must pay, you must do that, you must do that. So there is that problem between the two. (R17, restitution manager)*

The historic racial component of conservation in South Africa is also a factor in the current claimant and conservation authority relationship.

*Conservation has been seen in the past as a white man's island. The white's were the only ones going to those places. The blacks they don't think, let's go out for the weekend to Hluhluwe (a protected area). (R8, restitution manager)*

Historic hostilities between the conservation authority and communities often don't change overnight. Today, although the conservation leadership has made positive changes in working with communities, there are still vestiges of the old system.

*When I first started, the hostility between conservation, the old KwaZulu Nature Conservation people and the local community was tough, I mean, it was hot. Hot, hot, hot. But it's now changed. There's still a long ways to go, they're not out of the woods yet because the conservation authority is still an organization with a lot of old apartheid-type people in it. Their leadership is good but it doesn't always make its' way through, especially out in the field. (R7, lawyer)*

Although tension between the conservation authority and the communities exist, land claims could actually be an avenue to repair these relationships.

*When I got to NCS I knew of the tension that the organization had with the neighboring communities. For me I thought that the land claims were providing a unique opportunity for the organization . . . to really correct the wrongs of the past. (R2, former conservation manager)*

### Claimant Cost and Comfort

Claimants sometimes experience some very practical obstacles to participating in decision making. There is the cost of time taken to come to meetings and transportation to meetings out of walking distance. Claimants also may not feel comfortable participating in decision making due to unfamiliar settings and procedures that other stakeholders are accustomed to.

Claimant trust members are not paid and they use their own money to go to meetings which may affect a claimant's family.

*We don't get anything for salary. We are the trust, but you don't earn anything. We use our money from our pockets to go to the meeting. My wife is a teacher. I have to ask money from her that pays for the meeting since 1995 till now, 2005 will be ten years. And then she ask us, when are you going to come through? When are you sponsoring me? This is the problem, we are working under that pressure. (R31, claimant)*

In addition to the cost of transportation to meetings, it also takes time for claimants to be on the claimant trust and this competes with their other work. Given the costs to trustees there it could be important in the long term to compensate them for their work.

*One of the restricting factors is that it obviously takes a lot of time and . . . we're not dealing with people (claimants) who can spend hours and hours and get in cars and travel and make phone calls and all this for nothing. They're working people. And so they've got to be compensated, to an extent, for what they do and so that's another issue. You know, you can't expect people, for years and years and years to work and work and work for no reward. Like anybody else, they've got families to support and other jobs to do. (R25, lawyer)*

However, in spite of the costs, trustees may remain very committed to working on behalf of the claimants.

*We are coming from different places. Induna is staying far away but he comes here using his own money, his family money, for the meeting of the Trust. Also the other people are coming from far away and it's difficult, I stay far away but because I know I am working for the community, that is why I come here. It's a hard job to work for the community, I don't know even how to explain that. (R4\_1, claimant)*

Beyond the costs of participating, participation can be challenging because claimants face a new and unfamiliar situation when negotiating with other stakeholders. Formalized facilitation may actually inhibit claimant discussion.

*You might have a good model of facilitation but it might not fit to the way [claimants] live. Let's take an example, when people are discussing serious issues they will be sitting under a tree. And the people that are going to be talking are the people that they respect. Then they are going to be more relaxed and they will voice what they fear. But immediately if you come and start formalizing things very few people are going to understand you and they're not relaxed. (R13, conservation manager)*

Members of the claimant trust may not even speak at meetings with others because they don't feel comfortable presenting their thoughts.

*The Trust should be used to participating rather than being only listeners. Participation itself is very much needed. Most of the time we used to listen but only to find that only three or four people would speak. Most of them they are just quiet, not that they don't have something to say, they have something to say, but because they feel, I don't know what to say, inferior to present, you see that. (R4\_1, claimant)*

### Claimant Power in Negotiation

Another obstacle to claimant participation in decision making is claimants' ability to represent their interests in relation to other stakeholders who have more expertise and resources than claimants do. The respondents below addressed the discrepancy between claimants and other stakeholders relative to their ability to negotiate for their respective interests.

Claimants often lack outside support and thus don't have an equal balance of power relative to other stakeholders. In contrast to the KwaZulu-Natal claims, the Makuleke claimants in the Limpopo province had advisors who worked with them in negotiations with the government helping equalize the power balance. When there are inequalities in power between parties then one likely ends up compromising more than another.

*The claimants don't get a whole lot of support from the NGO's or whatever. So the claimants are not weighted properly in the power balance so they will, under pressure, agree to stuff that if they thought about it, if they got advice about it, they might never have agreed to it and that's now what's coming up. They are saying, "How could you have made us agree to this? This is preposterous." . . . If you take the Makuleke claim, that community had advisors that they used, so when the government came with their*

*approach they had people to combat their arguments. I don't want to put across the idea that people ran roughshod over [claimants] because they didn't care about them. They were representing their standpoints, that's what they are paid to do. So a conservation authority would have a standpoint, the Department of Water Affairs and Forestry would have a standpoint and they put these same points across, and both sides had to compromise. And if the power relations aren't equal, one side compromises a whole lot more than the other side does. (R3, conservation manager)*

Claimant trusts may also face challenges in getting other stakeholders to both meet with them and to take claimants points seriously.

*The difficulty we have as a trust is when we call up a meeting, [other stakeholders] must come to attend those meetings. Because that is where most of the points are being discussed and we come up with the possible solution and hand it over to the other parties we are involved with. But if these points that are being raised by the community are not taken seriously by the other parties this is now where it becomes very difficult to us as a trust. (R4, claimant)*

While claimants often have little or no independent legal support, other parties have plenty. It is problematic if claimants are made to feel they can negotiate equally when in reality they lack the legal and financial resources that other parties have.

*There was a great amount of negotiation around Mbila . . .but again, fundamental, there was no independent legal support for the claimants whereas almost endless legal support was there for the other parties. . . It was quite interesting that [claimants] didn't think they needed that or didn't think they had the right to do it. That's a fatal flaw. If the Commission's going into negotiations and creating a perception in a community that the community has the ability to negotiate that on an equal basis with them that's wrong, because they don't. There's no way that [claimants] have the legal, never mind financial or other resources. (R9, NGO)*

#### Capacity—Claimants and Conservation Authorities

Claimants and conservation authorities each face a lack of capacity to engage with each other. Each group has extensive experience but in very different areas. Claimants often lack the technical skills related to conservation and tourism management while conservation authorities lack the social skills needed to engage with claimants. This section is divided into a discussion of claimant capacity, including the role of experts, and conservation authority capacity.

### *Claimant Capacity*

In protected area claims, claimants are in a position to make decisions about fairly specialized activities such as tourism development and conservation management. Often claimants have little knowledge of the topic to be decided upon and no previous experience with these activities. They need to build capacity in these areas to effectively participate in decision making. Or, as some previous quotes have made reference to, claimants need outside support, advice, and resources to aid them in decision making. Below respondents discussed first the need for claimants to build capacity and second the role of experts to negotiate on their behalf when necessary.

Claimants often lack experience with protected area conservation which is a challenge to protected area restitution.

*Now you give [claimants] the ownership, they become the owners of the land, but they are not going to use it. . . They don't know what conservation areas are, there's a lack of experience, a lack of skills, the lack of equipment, they don't have money and all this stuff. Those are challenges that we are having, that we give back this land to people, but they are not able to do anything, they still have a long way to go in terms of understanding what is conservation, why it's supposed to be there. (R17, restitution manager)*

The feasibility and sustainability of protected area claims is dependent on claimants being able to plan with other parties after gaining capacity in conservation and tourism management and decision making.

*You need to sit down and plan together, then it's feasible. Because [claimants] will feel that they are part of this thing and believe me or not, there will be no pushing. . . . It is like that because there's consultation, there is training about the environment and conservation and tourism. If you don't train [claimants] and you tell them that they have to read what was written some years ago by a white man and translate into Zulu, it won't work. They have to be part of it so it is sustainable. (R28, restitution manager)*

Claimants need to build decision making capacity so that they don't rely on others to make decisions for them or make decision without clear understanding.

*We have noted that when people come and say we are going to do this, one, two, three, four, we must not say, oh, thank heavens, we are free at last. But we must sit down and*



*make a decision. So now we have learned that we can not simply agree without having a clear, clear, clear understanding. (R32, claimant)*

Capacity building is critical to implementing protected area restitution and there is a need to begin with basic skills.

*The most important thing is capacity building— appropriate, long-term capacity building programs. That is a must. And it doesn't start with complicated business issues. It starts with adult basic education, which is your language, reading, writing, basic business skills, basic legal skills, management skills. It's putting in place more than a trust. It's putting in place trusts and then educating people about the responsibilities associated with that trust, functions that such a trust should perform, etc., etc. To me that's the first real thing. (R22, restitution consultant)*

In addition to capacity building, claimants need assistance with institution building.

Claimants need a functional organization to manage the projects that restitution brings.

*This thing of land claim settlements it comes with big projects, big ideas, big promises, and creates huge expectations. . . . It comes with a package to illiterate or semi-illiterate people, impoverished people, and very old people who are looking for now. They are not worried about the future, okay. But this package of huge promises with big expectations and all that . . . require [claimants] to be fully functional as an organization or as an institution. . . So one of the things that should be happening in the process, in this vacuum, is this institutional building, followed by intended, deliverable, or specific, skill-oriented capacity building. That's what needs to happen, so that when these things come, people are ready to do it. (R26, conservation manager)*

Capacity building can include sending claimants to universities to learn about tourism and biodiversity conservation in addition to shorter workshops.

*We want to send kids to tertiary institutions to learn about tourism and biodiversity conservation itself. We want them to go away to school and learn, come back during holidays to practice, that will be empowering for people, otherwise you won't be involving them. (R8, restitution manager)*

One respondent described a workshop that he felt engaged the claimants and their minds in a positive way. This workshop entailed building claimant capacity in contrast to meetings where claimants had just been told things by other stakeholders.

*The workshop that I would say was a little bit sufficient to us was run by . . . the people that were coming from Pinetown . . . because we were raising our ideas by then. The Trust just came with some certain things, these people they were looking to us, what is it that we want for our area, what is our vision, what do we need, what kind of development do we want. They were doing the business plan but they were also trying to cover everything about the state forest like how can we manage it. So these people, they actively involved us rather than saying this and this and this and this and then pack and*

*go . . . Those people they tried to promote our minds and tried to enlighten us so that we could see what is it we are looking for, where are we going. (R4\_1, claimant)*

### *Role of Experts*

Numerous respondents pointed to the need for claimants not only to build their capacity but also to have access to experts that could advise them. A large component of building capacity is about giving claimants the skills to hire experts and assess their work.

*We make the assumption that communities know what's best for themselves. . . and I think that's wrong . . . If you assume that they don't know what's best for them, well then you say okay, you better find resources so that they can appoint their own experts, then we can negotiate better. . . . So for me building capacity, it's not so much skills as giving [claimants] the resources to employ these experts so that they get good people and build trust between the trustees and the experts. Capacity building in the trust is not about how [claimants] plan the area, it's about what, as managers of a local area, do we need to do to make sure that the right things happen. You can't possibly teach trustees everything about management planning, legal planning, financial planning. All that they need to do is understand that they need experts, how to employ them, how to assess their work, etc., etc. That's what I think needs to happen, and that evolution has yet to be faced in community programs all over the country. (R22, restitution consultant)*

Given the kinds of deals that claimants will be involved in it can be important that claimants have a lawyer to represent them.

*Now [claimants] are going to be dealing with serious contracts, agency agreements, joint ventures, with big money. You know, people are going to be spending hundreds of millions of rands developing and there has to be shares in it for the trust. So they need someone who's got skills in developing those relationships simply to protect their interests and to advance their interests. And so as I see it, in the future we're going to start dealing with these people who have won these bids. You know, they can't do without a lawyer. It's as simple as that. I mean, it's as simple as that. (R25, lawyer)*

Claimants often have no knowledge of issues that arise during implementation and thus the opportunity to consult with experts is important for adequate representation of claimant interests.

*When the [claimant trust] has been elected they must . . . make sure that they get experts, people who will advise the trust or that community of what is really happening. Because . . . all of us have got no knowledge about land claims and other things and then they take a chance. You see, they take a chance of doing whatever because they know that there's no expert, nobody has got the knowledge of this land claim and other things, we are just talking whatever comes in our minds. But if they can get an expert, a person who will advise them before every talk that takes place it will go right. (R20, claimant)*

Although access to experts is important for claimants, it's important that the trust develops certain capacities and claimants don't rely on outsiders to do all of the work.

*You know, it's so easy for a lawyer to justify spending a hell of a lot of time and making a hell of a lot of money. But you have to sort of say, well, where am I essentially involved? Where can I really contribute? And as soon as you find yourself doing things that a lawyer shouldn't really be doing, then you've got to ask yourself the question, is there the capacity in the trust to do this work without me? If there isn't, then you have to develop that capacity. (R25, lawyer)*

#### *Conservation Authority Capacity*

While claimants lack capacity in protected area management and tourism development, conservation authorities may lack capacity in working with claimants. Although respondents say it's beginning to change, this lack of experience is another obstacle to implementing protected area restitution.

There is also a need for protected area managers to move beyond their traditional skill sets in order to gain capacity in working and communicating with claimant groups.

*What has been happening is that you have managers who are well-skilled in managing wildlife but have no idea how to interact with communities outside protected areas. If you go outside [the protected area], fully out, people are going to say you're coming to talk to them with very opposite minds. . . We need to start looking at some kind of an awareness building for protected area managers about how to deal with the communities. You might have a good intention, you might have a specific project that is good for the people, but the way you present yourself to them has got a really huge barrier. So it's still happening. It still happening. It's a challenge to the organization and it's challenged how we reach people and get people to accept us and understand parks and conservation. . . . You can't necessarily read a book and then know how to approach the community appropriately. It takes experience and probably a lot of talking with people who do know how to do it. . . Then you are starting to grow up. It's a capacity issue. (R13, conservation manager)*

Due to lack of experience with land claims, some organizations became resistant to the restitution process rather than embracing it. This resistance created an obstacle to implementation.

*It has taken many years since the land claim program began for many institutions to understand what it means. And most organizations, including ours, became resistant to the process and we looked at land claims as a threat, a big threat to the organization, and as a result, a very defensive approach was taken. So that's one of the problems why there's been no progress in terms of implementation. (R26, conservation manager)*

Conservation authorities are more focused on biodiversity conservation than social processes, however, some training is now addressing the gaps in capacity to work with social issues.

*Our organization is a biodiversity conservation organization. The vast majority of our trainees are either associated with biodiversity conservation or administrative processes to insure that biodiversity conservation happens. There's not a lot dealing with people and dealing with conflict resolution. Social processes are not adequately addressed. . . But within the community conservation staff we have identified gaps and training has been very helpful in addressing those gaps. (R3, conservation manager)*

## **Summary**

The difficulty in defining tangible settlement outcomes and benefits is demonstrated by stakeholder debates about how claimants should be involved with the land after settlement and the absence of many benefits during implementation thus far. Both determining and implementing settlement outcomes and benefits take time. Claimant engagement with other stakeholders in determining benefits is the beginning of the tangible outcomes of the implementation process. At the time of this research stakeholders were still debating the merits of different benefits claimants could receive from the land and how claimants would ultimately participate in management and decision making. Rents and leases, lodges and tourism developments, employment, owning game, and accessing the land are all ways claimants could benefit from the land. Which of these benefits will work the best may vary from claim to claim. The extensive debates about implementing benefits when settlement means claimant ownership of a protected area also demonstrate that other types of settlement, such as the provision of alternative land or part excision of a protected area, may be better for some claims.

Claimant participation in management and decision making has also been difficult to achieve. There are a range of ways that claimants could participate, however obstacle to their participation include: claimant and conservation agency relationship history, cost of participation to claimants, claimants comfort participating in an unfamiliar setting, claimants' lack of power in

negotiation, and the lack of capacity among both claimants and conservation agencies to work together. Capacity building, increasing support and resources for claimants and claimant and conservation agency commitment to work together can begin to address these obstacles.

## **CHAPTER SIX: DISCUSSION AND CONCLUSION**

The purpose of this exploratory study was to examine the challenges to implementation of protected area land restitution in KwaZulu Natal, South Africa. This chapter discusses the implications of the findings presented in chapters four and five and presents recommendations based on these implications. The latter part of this chapter relates the study findings to previous research and suggests future research.

Two themes that emerged from this study were *poor understanding of claimant protected area ownership* and *difficulty defining tangible settlement outcomes and benefits* within the protected area claim settlement model currently used in KwaZulu-Natal. These themes identify two important types of challenges to protected area land restitution. These challenges have in part caused the slow and contested implementation of KwaZulu-Natal's protected area settlement model used at Mbila, Mabaso, and Mbangweni. Although there is the potential to meet the goals of land restitution through this model of land restitution, many aspects of implementation are challenging and have not been accomplished. These challenges also demonstrate that in some situations, this model is unlikely to work and alternative types of settlement may be important to explore.

### **A Review of KwaZulu-Natal's Protected Area Restitution Model**

Land ownership usually means that the owner enjoys total or primary access to and control of that property and its resources now and in the future. However, in the case of KwaZulu-Natal's protected area land restitution model, claimant ownership of the land is restricted and means negotiating access, land use, and decision making with a conservation agency and other interested entities. Settlement agreements mandate that conservation management must be in place and that ownership come with land-use restrictions. In addition, the settlement requires co-management or joint management between claimants and the

conservation authority, or the incorporation of claimants in agency decision making. This settlement model is not sought out by either claimants or the conservation agency but is determined by the Department of Land Affairs' principles guiding protected area land restitution.

It is important to realize the obstacles that this policy design presents to subsequent implementation. Stakeholders are challenged by the complexities of determining claimants' responsibilities and benefits in their position as restricted land owners. Settlements in KwaZulu-Natal also haven't changed management of the area. Settlements allow for claimant participation in current management and decision making structures but the structure and style of management remains largely unchanged. The limited influence the new land owners have on changing management can create implementation challenges if claimants desire to have more control over their land.

Despite the restrictions built into the settlement agreement, this kind of protected area land restitution constitutes dramatic changes for all stakeholders<sup>25</sup>. To regain "ownership" of their historic lands, claimants must commit to engaging in protected area conservation activities with a government conservation agency and entering into an ownership arrangement that means involvement with local, national, and international entities interested in their land. For claimants, this commitment entails large changes. Through the negotiated settlement, claimants essentially enter three new and unfamiliar arenas: practicing protected area conservation, working to manage an area with a designated government agency, and engaging with interest groups on multiple scales. For conservation agencies, land claim implementation means a change in management practices to incorporate a new land owner and decision maker. In essence, protected area land restitution means claimants and conservation agencies must share land ownership and management responsibilities.

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<sup>25</sup> Stakeholders, as defined in Chapter Three, are those signatory to the settlement agreement and most active in implementation.

Land restitution in KwaZulu-Natal's protected areas is a special case of an integrated conservation and development project (ICDP) involving a particular kind of land ownership. Along a continuum of ICDPs, participation of local people in protected area or natural resource management and decision making may range from very little to a significant amount. Although KwaZulu-Natal claimants now own the land, the current settlement model falls on the limited participation end of the ICDP continuum. Claimant ownership can be described through the characteristics of ownership in process, outcome, and distribution. Regarding claimant ownership of decision making and management activities on the claimed land, claimants had neither a strong voice in negotiation and planning, nor significant responsibility for and influence over execution. Yet despite not having significant influence over process and outcome, claimants were substantially affected by the decisions. The KwaZulu-Natal settlements have not brought about significant, if any, changes in management or decision making of the protected area. After settlement, management of the protected area has continued to follow strict regulations. Although the impacts of tourism development are allowed in the protected area, other activities of interest to claimants that have similar scale impacts such as limited cultivation are not.

### **When Does This Settlement Model Work?**

Before examining challenges to this model, it is important to better understand when this model is a good fit for a particular protected area land claim. Study participants identified a variety of conditions that were important for accomplishing protected area land restitution. These conditions were addressed both in participants' discussion of the tangible products claimants receive from restitution and the meaning and feeling of ownership for claimants. Tangible products that could be important in restitution implementation included potential financial gain through tourism, employment, or game sales; access to the land for some uses; recognition from others as landowners; and participation in decision making and management on the land. These tangible products are part of what made protected area ownership meaningful for claimants.



While participation in decision making and management, and recognition from others may be influenced by stakeholders, the availability of financial benefits is dependent on the characteristics of the claimed land. These land characteristics may change over time but are not easily influenced by stakeholders. If financial benefits are not available due to area remoteness, lack of game, or numerous other factors, holding title to land that will only cost money to manage may not meet the hopes of the claimants.

In addition to financial benefit and the other tangible products, participants also discussed the importance of regaining ownership of their land. This feeling of ownership was also important in making ownership meaningful for claimants. Participants talked about the pride and status of being a landowner, sentiments that were not necessarily tied to tangible benefits or land uses. For claimants, the feeling was also about regaining ownership to the land of their ancestors from which they were dispossessed. This feeling is clearly important; however, if claimants don't gain adequate access and control over their land during implementation, it would likely diminish. Participants in this study discussed claimants' feelings of pride associated with becoming owners of their historic lands, however claimant groups elsewhere may not necessarily maintain a strong connection to the land they were dispossessed of. Claimant groups that are geographically scattered or were dispossessed of their land before any of the current claimants were born, may place less importance on regaining ownership of the particular area of the claimed land.

Both the financial benefits available through a particular claim and the importance of the particular land to claimants should determine whether KwaZulu-Natal protected area restitution model of protected area land restitution is appropriate. Although simplified, some categories could help assess potential settlement options for protected area claims. As outlined in Table 2, claims could be categorized according to high or low levels of financial benefit (through activities allowed by the settlement) and high or low levels of importance of regaining ownership of the particular claimed land (versus alternative land) to claimants. In addition to these factors, claimants need for residential and agricultural land should be considered.

Table 2: Potential types of protected area land claims

		<b>Importance of particular land to claimants (IL)</b>	
		Low	High
<b>Availability of financial benefits (FB)</b>	High	3. High FB/Low IL	4. High FB/High IL
	Low	1. Low FB/Low IL	2. Low FB/High IL

In situation one, the available financial benefits and importance of the land are both low. When there is little opportunity for financial benefit through the land uses permitted by the settlement such as tourism, game sales, or harvesting from the area, and low importance of that particular land to claimants, then returning ownership of land that will only cost money to manage does not seem to be a workable model. In this case, KwaZulu-Natal's model of protected area restitution does not seem appropriate. If claimants need residential or agricultural land this settlement option makes even less sense. The most appropriate settlement option in this situation would seem to be alternative land or financial compensation if claimants don't need land.

In situation two, the available financial benefits are low but the importance of that particular land is high. In this scenario it may be appropriate to return land ownership as defined by the policy and settlement to claimants despite the lack of financial benefits. With a claimant group committed to conservation management and access to necessary training, one settlement scenario could be government subsidy for management of the area being directed through the claimants. Claimants could be employed in conservation management and participate in decision making. However, if claimed land that lacks financial benefit is restituted because of the lands' significance to claimants, claimants must understand the financial reality. Another option in this situation might be excision of a portion of the protected area for claimants to use for agriculture or other economic activity. If claimants need residential or agriculture land, excision would be especially important to consider. Another type of settlement could include restituting alternative

land for residence or other economic uses and giving rights of access and decision making on the claimed land but not ownership through a title deed.

In situation three, the financial benefits are high but the importance of the particular land is low. In this kind of claim it would be important to get a clear understanding of claimants' interest in undertaking protected area management with a conservation authority. If this interest was high the current settlement model could be a good one, particularly if alternative land outside the protected area is difficult to find. If claimants' interest in protected area management was low, alternative land or financial compensation may be a better settlement.

Situation four is the ideal for the current settlement model. Here claimants have the opportunity to gain financial benefit from land that is also important to them for non-economic reasons. However the higher financial benefits available in both situation three and four bring a separate set of challenges. Achieving these benefits may require claimants to enter a world of tourism and business and partnerships with the private sector. This world requires business skills and savvy that may be unfamiliar to claimants who may be vulnerable to outside business interests.

Regardless of the level of potential financial benefit or importance of land to claimants, most importantly in this current settlement arrangement, claimants must be made aware of the circumstance surrounding protected area ownership through land restitution. Once aware of the circumstances accompanying restricted ownership, claimants need to have the opportunity to make an informed decision about whether that is the restitution package they want. Conservation agencies also need to be educated about what settlement options mean for them. In situation two, three, and four, a settlement similar to the current model could be a good solution. However, determining if the model will be workable is difficult. During settlement negotiations, stakeholders often have little detailed understanding of what changes this type of protected area land restitution would bring. Implementation details are not negotiated during settlement but are left to be determined by supplementary post-settlement plans. Thus, stakeholders settle the claim

without understanding exactly what they are deciding upon. The specifics of claimant benefit and participation are not determined and stakeholders are often unclear on what they are committing themselves to.

### ***Protected Area Restitution Policy Evolution***

In addition to considering when the current model will work, stakeholders, the Department of Land Affairs, and other policy makers should consider how protected area settlements and the DLA protected area settlement guidelines can evolve in the future. In the new democracy of South Africa, claimants themselves should have a voice in determining the policies that affect their livelihoods and ability to regain ownership of their historic land. The current settlements are a step towards democracy but with limitations. In the future, claimants may participate in the policy process in addition to participating in land management and decision making. Protected area land restitution involves multiple interests and as policy evolves, stakeholders must pay attention to which interests are being privileged and prioritized. In KwaZulu-Natal dozens of protected area claims remain unsettled. Future stakeholders can take lessons from current claims and use them to shape policy and future settlement and implementation processes.

### **Toward More Effective Implementation of the Current Model**

If stakeholders do choose the current model of restricted protected area ownership versus alternative land or financial compensation, it is important they understand the associated challenges and work to overcome them. KwaZulu-Natal's model of protected area restitution calls for the land restitution program and conservation agencies to achieve equitable and effective restitution for land claimants while maintaining conservation of protected areas. This means balancing the restoration of real land rights for claimants, maintaining conservation goals, and effectively implementing claim settlements such that both the new landowners and conservation

benefit. The lack of implementation of protected area restitution demonstrates that challenges exist to returning partial or restricted land ownership rights to claimants. This section first addresses challenges that fall into the two themes of this study: poor understanding of claimant protected area ownership and the difficulty defining tangible settlement outcomes and benefits. Next, this section outlines the implications of these challenges such as the need for recognition of the new responsibilities of each stakeholder and associated capacity building to fulfill these responsibilities, the need for stakeholder commitment, determining funding, and the role of an interim management plan.

### ***Poor Understanding of Claimant Protected Area Ownership***

What does it mean for claimants to own a protected area? This scenario is new to South Africa and stakeholders can hold a wide variety of expectations for the settlement. Claimants have little or no experience with protected area management while managers must share some decision making incorporate new landowners who make have new ideas about land use into the land management. Claimants' expectations of financial benefit may be too high, while protected area managers may have inaccurate expectations of incorporating claimants into decision making. Managers may either hope to keep the status quo rather than truly incorporate claimants or have too high of expectations of claimant participation before claimants are able to build capacity in protected area management decision making.

This study showed the importance of realizing how stakeholders are repositioned among one another as a result of the restitution. Protected area restitution in effect changes the relationship that claimants have with other local, national, and international entities interested in the area. With the signing of the settlement agreement, claimants gain legitimacy as land owners and a new social position and status. This new position has the potential to increase claimants' role in protected area management decision making but may threaten the authority of other entities.

KwaZulu-Natal's protected areas are important for conservation, land restitution and social justice objectives, and economic development. Each stakeholder prioritizes these goals differently and has different expectations of what claimant ownership means and should entail. Understanding these differences and building stakeholder capacity to work towards implementation within this context of multiple priorities is important.

### ***Difficulty Defining Tangible Settlement Outcomes and Benefits***

The difficulty defining the tangible products of being protected area landowners involves the challenges of determining and implementing claimant benefit from the land and participation in decision making. Stakeholders must find replacements for the loss of typical land restitution products such as residential and agricultural land that are available from non-protected area land claims. Replacement options include participation and employment in tourism and conservation management, renting or leasing the land back to conservation agencies, selling game, or accessing the land for harvesting and other activities. Determining and implementing benefits from the land is challenging and stakeholders struggle with what uses the land can support and what uses are acceptable to stakeholders. Settlement agreements direct the participation of claimants in land management; however, numerous obstacles exist to achieving this participation. Obstacles include tense claimant/conservation relationship history, the time and monetary burden on claimants to attend meetings to participate, claimants' discomfort with participation in an unfamiliar decision making culture, claimants' lack of power, and a lack of capacity among claimants and conservation managers to work together to make land management decisions.

### ***New Responsibilities and Capacities When Implementing the Current Model***

This model of protected area land restitution means the claimant trust, the conservation agencies, and the land claims commission, each has new responsibilities. The new position of each stakeholder demands both increasing capacity to fill unfamiliar roles and shifting to a new

protected area management paradigm. The claimant trust has new responsibilities in managing land and their relationships with the protected area management agency, the larger claimant group, and a variety of other entities. These new responsibilities are sometimes unclear and it is difficult to understand the role of the new landowners. Challenges arise around how to “share ownership” of land that historically belonged to claimants and their ancestors but now has importance to a wide range of people. Although the claimed land is in essence private land with restricted use, it’s being managed as a public good. In this context the claimant trust must manage the demands of a diverse claimant group within the reality of restricted land rights and a management scenario where the conservation agency is the primary land manager. As protected area land owners, claimants are in a position to negotiate with a range of entities about a variety of issues. And each of these entities has their own expectations for the claimed protected area. Negotiations include issues ranging from access to the land for local non-claimants to maintaining biodiversity in conjunction with international conservation bodies. Being active in such negotiations means claimants need to gain a new awareness about the significance of their land. During implementation claimants must shift from a position of “claimants” to a position where they are aware of the perspectives and goals of other entities and can assert themselves in negotiation with these entities.

The conservation agency also faces new responsibilities during implementation. While continuing their traditional management activities, they must now incorporate a new partner, the claimant landowner, in these activities and decision making. It is challenging to determine how to continue to manage an area for the public good of biodiversity conservation and recreation while also responding to the demands of the claimant landowners who have a much longer and entirely different relationship with the land than does the conservation agency. The settlement requires claimant participation and the agency is challenged create management plans with claimants that include and benefit the new landowners. In addition, with a mission of making protected areas relevant to area communities, the agency must balance the demands of the

landowners with the demands of local non-claimants who also have an interest in the protected area. And while considering local level interests, the conservation authority also faces national and international pressure to effectively preserve biodiversity and to increase the amount of conservation land and limit the impact of tourism and other human activities.

In protected area claims the regional land claims commission is challenged to facilitate implementation of claimant benefit and participation. This means negotiating between claimants and a conservation agency that may hold conflicting expectations for land use and management. In KwaZulu-Natal these negotiations have been tense when the regional land claims commission advocated for compromises from both sides.

To achieve real change and effective implementation in this scenario claimants and conservation agencies must be aware of the new responsibilities each carries and build capacity to fulfill these responsibilities. Conservation management as determined by the state requires a level of education and experience by practitioners that isn't often found among claimant communities. To effectively involve claimants in decision making they need training and access to experts (lawyers, NGOs, etc) for consultation on technical issues. Real change can only come when claimants are able to significantly influence decision making about their land. For claimants to exercise some control over their land they must be recognized as legitimate land owners by the conservation agency and other entities. This legitimacy can be achieved through continual claimant involvement in management and decision making, and access to benefits.

### ***Determining Funding***

There is a need to determine appropriate funding for the claimed protected area's management and capacity-building among claimants and conservation agencies. A portion of protected area management in South Africa is currently subsidized by the government. If this subsidy continues it must be determined whether it will be directed through claimants or through the conservation agency. And if there are revenues from tourism, harvesting, and/or game sales,



it needs to be determined how the revenues will be distributed between management and claimant financial benefit.

### ***Stakeholder Commitment***

This model of protected area restitution calls for additional commitments by each stakeholder. To realize the full potential of protected area land restitution to benefit claimants and change protected area land ownership in a meaningful way, it will take extensive commitment to the implementation process. Each of the major stakeholders, claimants, conservation agencies, and the regional land claims commission, face a new situation that pushes them outside of their traditional roles. Claimants have little experience negotiating with state agencies and engaging in the technical aspects of conservation and protected area management. Conservation agencies are not accustomed to working with claimants who now own a portion of the protected area that they are charged with managing. The Regional Land Claims Commission guides land restitution but, like the claimants, has little experience with conservation and protected area management.

### ***The Role of Interim Management***

Addressing the challenges associated with understanding the meaning of ownership and determining benefits takes time. Quick implementation of all aspects of the settlement is not possible in the context of conflicting expectations, tourism development, and a management paradigm shift. Stakeholders need to recognize that implementation will take time. There may be a role for a shorter term interim management plan while stakeholders learn their new roles and consider their future options under the settlement.

### ***This Study and Relevant Literature***

This study demonstrated that many of the challenges to protected area land restitution described in the literature exist in KwaZulu-Natal. In addition to confirming the presence of

these challenges in KwaZulu-Natal's protected area restitution, this study detailed the repositioning of claimants after settlement and the choices and tradeoffs stakeholders faced during implementation of economic benefits and claimant participation.

In KwaZulu-Natal, stakeholders are experiencing the beginning of the long-term and enduring implementation phase described by the Indian and Northern Affairs Canada (2003) land claim implementation handbook. South Africa's national and provincial regulations pertaining to claimed protected areas ensure that a relationship between the new land owners and the government will be long-standing. The claim settlement marks the beginning of a new relationship between the claimants (now landowners), government entities, and other stakeholders. As Kepe and Wynberg (1999) state, the implementation phase of protected area land restitution is the "most challenging and important of all the phases."

This study showed that protected area land restitution in KwaZulu-Natal faced challenges similar to those identified in past research regarding protected area land claims and co-management. Moore (2003), Borrini-Feyerabend *et al* (2000), De Villiers (1999), and others working on co-management and protected area land claims have noted that challenges may arise when stakeholders groups see different purposes for the protected area and have different expectations of how the area should serve the landowners. This difference in expectations and perceived purpose among stakeholders was apparent in KwaZulu-Natal when study participants discussed the meaning of claimant ownership to different groups on local, national, and international scales. The importance of these scales in KwaZulu-Natal's situation reflects Wynberg and Kepe's (1999) assertion about land reform in protected areas that "one of the most fundamental conflicts lies in the difference of interest expressed at international, national, and local levels." KwaZulu-Natal's protected area claims indeed bring together entities with diverse interests such as preservation of parks, World Heritage sites, and RAMSAR sites (wetlands of international importance), social justice and reconciliation through land restitution, access to land for economic opportunities, and interests of regaining ownership to ancestral lands.

Regarding co-management or joint management, many of the challenges observed in this study regarding decision making and cooperation between stakeholders with diverse goals are consistent with the literature. In KwaZulu-Natal, first determining benefits for stakeholders and second, achieving participation of all stakeholders were challenging. This study demonstrated a significant amount of tension around defining and implementing the economic benefits of protected area land restitution for claimants. Wynberg and Kepe (1999) note that claimant expectation of financial benefit and the lack of readily available benefits from protected area claims are a point of conflict between claimants and conservation agencies during implementation. The challenges study participants faced regarding participation of claimants are also not uncommon. In KwaZulu-Natal claimants sometimes felt discomfort in participating because of the unfamiliar decision making and management setting and procedures which de Villiers (1999) characterized as differences in decision making culture among claimants and other stakeholders. Some of the discomfort resulted from a lack of experience in and capacity to engage in Western protected area land management. De Villiers (1999) noted that the technical nature of land management decision making has weakened the influence of claimants who lack capacity to engage at a technical level. Moore (2003) noted a similar dynamic, that differing interests and values among stakeholders in regard to western scientific research methods and traditional knowledge, are a barrier to co-management.

In addition to stakeholders diversity in decision making culture there is a power discrepancy among stakeholders in KwaZulu-Natal's protected area claim implementation. This power discrepancy can result in some stakeholders, for example claimants who lack access to outside expertise and resources, compromising more than others. As numerous other studies have shown (Kepe *et al* 2005, Isaacs & Mohamed 2000, Steenkamp & Grossman 2001), claimants' goals may be compromised during negotiations when more powerful government supported conservation agencies are asserting conservation goals. Moore (2003) also noted that a barrier to co-management is an unwillingness of a stakeholder to share authority with other stakeholders.

In KwaZulu-Natal, at times there is a lack of shared authority in decision making which may point to unwillingness on behalf of the conservation agencies.

### **Suggestions for Future Research**

Future research is necessary to continue exploring the lessons learned from implementation thus far, and how these lessons can be applied in the future. Research could examine how to improve the current restricted protected area ownership model's ability to provide real benefits for claimants through their participation in conservation and tourism. For this model of restitution to make real change in the lives of claimants, all stakeholders will need to learn and adapt to the new management paradigm. Research that examines where opportunities lie for building stakeholder learning and adaptation into the process would assist implementation efforts.

Because of the problematic nature of this model of restitution, it is important that it only be used when it is the option chosen by claimants who understand the associated restrictions and requirements. Future research could further address how to assess claims to determine the best settlement option in a variety of circumstances.

Finally, research could explore options for protected area restitution policy evolution. For policy to evolve it will be important for policy makers to understand the desires of stakeholders and their ideas for how protected area restitution can best meet both land restitution and protected area conservation goals.

### **Conclusion**

Protected area land restitution in KwaZulu-Natal has great potential to simultaneously achieve land restitution and conservation goals. Through protected area land ownership, claimants may gain access to new livelihood opportunities and the land of their ancestors. Although the settlement requirement of conservation land management constrains claimants' land

use options, it also allows claimants to enter into an existing land management structure. Entering into this established land management structure may help alleviate problems of mismanagement and environmental degradation that may occur in land restitution outside protected areas in situations (i.e. running a sugar cane farm) where claimants have little experience with the necessary land management and there is an absence of any structure to engage in management activities.

Challenges associated with protected area land restitution are largely caused by tensions with the way land restitution and protected area conservation goals are prioritized in policy and claim settlements by various stakeholders. Goals for reconciliation and development through restoring land rights and goals for conservation of a strictly managed and regulated protected area can clearly be in conflict. Although there is a potential to simultaneously achieve land restitution and conservation goals, protected area restitution will likely always involve compromises to each set of goals. The restitution process has been tailored to meet the goals of protected area conservation. It is essential that the process of protected area conservation also adapt and give claimants a role as land owners, managers, and decision makers. Finding a compromise between land restitution and conservation goals agreeable to claimants and conservation agencies is essential for the long-term sustainability of these land claims.

Part of achieving a balance between these goals is ensuring that claimants significantly influence decision making and land management. Without significant claimant participation, protected area restitution cannot be equitably and effectively implemented. Questions remain about whether substantial claimant influence is possible through the current model. As claimants gain capacity to negotiate with conservation agencies and affect management and decision making, these four settlements could evolve to give claimants increased responsibility and influence over their land. However, challenges to implementation are complex and if claimants cannot achieve significant participation or obtain adequate economic benefit, South Africa's model of protected area land restitution could fail to meet land reform objectives.

Understanding what it means for a claimant group to own a protected area and defining the tangible outcomes and benefits of being protected area landowners entails substantial commitment from all stakeholders. If these challenges are acknowledged and addressed by stakeholders and policy evolves to incorporate lessons learned from implementation of early protected area claims, land restitution that truly changes patterns of protected area ownership and control may be achieved. These findings are commonly understood by many protected area restitution stakeholders in KwaZulu-Natal who work through these challenges daily. Participants across stakeholder groups consistently identified similar challenges to implementation although there were contradicting ideas for solutions both within and between groups. These findings affirm the experience of many individuals involved in KwaZulu-Natal's protected area restitution and may assist groups pursuing protected area land claims in other areas in the future. The experience of KwaZulu-Natal and the implementation challenges described here can offer future claimants and other stakeholders a better understanding of the potential challenges associated with protected area land claims.

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**APPENDIX 1**  
**DEPARTMENT OF LAND AFFAIRS COMMISSION ON THE RESTITUTION OF**  
**LAND RIGHTS**

Draft document  
DLA  
5 October 2001

**SUBJECT:**

Settlement of restitution claims on protected areas and state forests under national government.

**PRINCIPLES THAT WOULD GUIDE SETTLEMENT OF RESTITUTION LAND**  
**CLAIMS IN PROCLAIMED PROTECTED AREAS**

**1. Context:**

1.1 In the past, conservation in South Africa has been to a great extent a white preserve. Restitution to rights in land falling within nature reserves could contribute greatly to the integration of conservation and to make it a truly South African concern.

1.2 Dispossession in many cases involving conservation areas was often gradual and effected through a steady erosion and down grading of rights in land until the communities were declared squatters on white land and could be evicted in terms of various legislation.

1.3 Restitution goes beyond the mere restoration of land as a commercial source and regard must be had to the social degradation and loss of identity suffered as a result of the dispossession and subsequent removal.

1.4 The need for reconciliation and the sense of identity and social belonging which play an important role in property relations must be recognised.

1.5 The resolution to valid land claims is an opportunity to redress injustices of the past and is not necessarily a threat to conservation of biodiversity.

1.6 The principal issue for conservation purposes is the management of the land, not the identity of the persons holding title to the land. The management of the biodiversity of the claimed land could be vested as per agreement applicable per the specific case and listed in terms of relevant legislation.

1.7 Land claims on protected areas are usually complex claims which call for careful consideration and negotiation:

1.7.1 The land is usually of importance for purposes of conservation and the promotion of biodiversity (listed as World Heritage sites, wetland, etc),

1.7.2 The land/ area could be strategically important (e.g. Kruger Park borderline, Forestry),

1.7.3 There is often an indication of mineral deposits on protected land,

1.7.4 The broader public as beneficiaries have an interest in the land (e.g. in terms economic growth, job creation, tourism, recreation, or even other communities residing in the immediate area),

1.7.5 Due to the apartheid and land ownership policies of the previous government communities could not own land.

1.7.6 Most often a large number of interested parties involved, which by implication also involves a large number of legislation to consider.

**2. Granting of title:**

2.1 The definition of a 'right in land' as per the Restitution Act ("any right in land whether registered or unregistered, and may include ... beneficial occupation for a continuous period of

not less than ten years prior to the dispossession in question”) is wide and includes far more than what is generally understood under the term ownership.

2.2 It puts traditionally insecure rights of tenure on a par with the formally recognised common law right of ownership. Ownership could be seen as a bundle of rights, with content determined by the function of the object of the right.

2.3 All options for the settlement of a claim in terms of the Restitution Act would be considered.

2.4 Title to conservation land can be transferred to claimants in a manner that achieves a win-win situation.

2.5 Entitlement to land can be awarded by the Land Claims Court in terms of section 35(4) of the Restitution of Land Rights Act No 22 of 1994 (the Act) and in terms of section 42D of the Act.

2.6 In terms of the Deeds Registries Act, claimants will establish a legal entity to take hold of ownership when land is restored. This would ensure that all members of a community will have access to the land/ benefit equitably from the agreement reached: These include principles of fairness, democracy, non-discrimination, transparency and accountability in the government of the association and a principle of fair access to the property of the association.

2.7 Granting of title is a form of redress for specific past injustices suffered by the community in terms of the Constitution.

2.8 Transfer of title will be coupled with registered notarial deeds containing conditions of use.

2.9 The state has a constitutional, legislative and moral obligation to ensure that the granting of title is crystallized in the actual registration of ownership in the name of the community.

2.10 Where in terms of agreements, there is deprivation of physical occupation to continue the protection of the conservation area this should be counter-balanced by a structured regime of economic benefits which will flow and accrue to the claimants as the owners of the land.

2.11 The structure of the economic benefits must give due weight to the rights of the claimants as well as other stakeholders.

2.12 In order to fully and meaningfully participate in management, a coherent process of succession planning and skills development must be put in place for the new owners.

### **3. Conditions of use**

3.1 Restrictive conditions could be registered. This could ensure that the land is maintained as a protected area (as per the nature of the specific claims and as per agreement amongst the parties). Conditions of use shall be listed. These could be inter alia, no residential resettlement, no development or activity except that which is compatible with the use of the land for conservation and ecotourism, reservation by the State of the mineral rights in the land, etc.

3.2 All agreements will recognise conservation in “perpetuity”. In perpetuity: the state shall retain the power to ensure that the claimed land remains in perpetuity as a national protected Area, in accordance with the relevant legislation, e.g. Environmental Conservation Act 73 of 1989, the National Forestry Act No ... of ... , the Ramsar Convention of ...

3.3 In a similar manner where the state owns land it could be deproclaimed, the notarial deed should provide for a clause that all parties could agree to a possible change in land use of the area or sections within the area on the basis of an environmental impact assessment. This would accommodate the need for land for example for residential and agricultural purposes.

3.4 Where applicable, allowance can be made to release a part of the conservation land that might no longer be acquired for conservation. All possible avenues should be explored; for example certain portion of the claimed land could be excised for use by the claimants.

3.5 All relevant legislation, conventions etc. shall be referred to and listed in the agreement.

3.6 There could be a clause to specify that the protected area, once transferred in title, may not be alienated other than to the State or a competent authority recognised by the State.

3.7 All parties shall define commercial activities within the agreement.

### **4. Consideration and inclusion of other communities in area**



4.1 Claimants who have a valid claim would have still been on the claimed land had it not been for removals. If claimants then have a constitutional right to restitution in respect of conservation land and other disadvantaged persons do not have such a right, there is sufficient basis for the claimants to be put in a better-off position than other disadvantaged groups with respect to access to the benefits of commercial development on the claimed land.

4.2 However, the Commission also commits itself to consider the needs and concerns and interests of all role players within the claimed area.

4.3 The broader public will benefit from any agreements reached as this would also be in keeping with the modern trend to recognise that a national park's human neighbours should share in the management of and the benefits derived from that park rather than being excluded from it.

4.4 Any agreement must have considered the interests of the claimant community as well a community other than the claimant community within the area of the claimed land and in relation to the conservation area.

4.5 While due consideration would be given to the constitutional right of claimants to restitution, the structuring of economic benefits should be done in such a way which gives due weight to the claimants' rights as well as that of other stakeholders.

## **5. Mineral rights**

5.1 The State is the owner of the mineral rights and therefore the participation of affected communities shall be subject to the provisions of such legislation / policies.

5.2 Given that status quo, in the event that the state commercialises mineral rights then consideration should be given to the benefit of the affected claimant communities.

5.3 There would be reference to any current and/ or possible mining activities.

5.4 Environmental assessments would be done prior to engaging in any mining activities.

5.5 If the state should wish to divest itself of the mineral rights, it would first be offered to the claimants legal entity at a reasonable and fair price, thereafter to a third party but not price not less and also not less favourable than to the legal entity and if given to a third party that party must compensate the legal entity for loss of surface rights as a result of mining or prospecting activities.

## **6. Management of the claimed land: management of the biodiversity, economic development and investment and economic and community empowerment:**

6.1 Claimants, through an established legal entity, could be ready to manage protected areas, state forests and world heritage sites and if so, arrangements could be made accordingly.

6.2 Where claimants are not ready to manage the land provision can be made for joint management and assistance can be granted to claimants to acquire the necessary management skills in order to take over after a specific period.

6.3 All parties should be represented on a joint management board in terms of a Integrated Development Management Plan

6.4 There should be a tiered management structure: referring to board level, operational level, etc. The management structure will also determine economic management

6.5 Principles and the implication thereof in terms of co-management that should be written into an agreement:

6.5.1 Participation: having a say in and contribution to the developments taking place in the claimed land and benefiting from the revenue accruing from such developments, provided that such participation takes place within the legislative consultative framework and do not undermine the financial integrity or sustainability. Participation should be on equal partnership basis within the IDMP structures,

6.5.2 Consultation: having a say, direct or via consultation within the legislative consultative framework and recognised structures in the manner in which assets and liabilities as

well as governance parameters are organised and run in the interest of stakeholders owning or having vested interests in those assets or liabilities and the governance parameters,

6.5.3 Empowerment: the existence of the environment or conditions that enable persons in the community as well as the community as a whole to have access to mental, cultural, social and economic information, skills and capabilities to see and understand opportunities, options and choices and be able to utilise those in the best interest of themselves and the broader community of which they are part.

6.6 It should be stated in the agreement that management shall be vested in... as per the agreement, e.g. joint management committee, GSLWP (Greater St Lucia Wetlands Park) Authority etc. and in terms of which legislation it should be managed.

6.7 The management of the land needs to be specified in terms of the nature of the claim, i.e. by whom and in terms of which related legislation: e.g. the GSLWP Authority that was appointed (this could be changed e.g. the claimant Communal Property Association could be appointed), in terms of the Environment Conservation Act No ... of ... and the World Heritage Conservation Act No ... of ...

6.8 Where joint management and representation of claimants on management and consultative structures is determined, it would be essential to indicate how this will be effected in practice e.g. how it will be constituted etc. and for what specific period this would be applicable as well as arrangements for future.

6.9 Where a Park is leasing land from an owner, the relevant Authority should enjoy undisturbed management of the area as per the lease agreement.

6.10 In order to limit any risks and ensure commitment, the benefits that the community will derive from the income / commercial activities need to be clearly defined and there should be an indication of how this will be effected.

6.11 The rights and contractual obligations of the parties should be listed and clearly defined.

6.12 Management of the biodiversity, economic development and investment where applicable should be indicated. The agreement will list all parties involved, and in terms of which legislation, indicate which percentage of the annual gross turnover generated by the Authority of commercial activities on the claimed land will be paid to the claimant legal entity.

6.13 The creation and promotion of a sustainable, conducive environment for overall economic development and investment as well as conditions for sustained gross poverty reduction as national priorities are upheld. This includes community participation and real empowerment.

6.14 There should be transfer of skills to the community and employment of staff from the relevant communities.

6.15 In terms of tender adjudication requirements for the awarding of commercial opportunities on land owned by the Claimant community should be structured in a way that favours proposals involving the claimant community by way of share equity or other partnerships. (The CPA can form a public company as an instrument for participation in joint ventures, business partnerships, ancillary businesses aligned to commercial activities, equity in game or other assets in the claimed land)

6.16 If communities are involved in the co-management of the land and have an economic stake in its preservation, conservation will occur.

## **7. Other associations for a greater conservation area**

7.1 Where applicable there should be recognition that there could be within one conservation area more than one claim.

7.2 To guard against fragmented ownership, there needs to be a link with other claimant communities to ensure consistency, cooperation and continuity.

7.3 Agreements would not be signed in isolation of other claims falling within the same area of conservation.

7.4 Where there is more than one claim on one Park, all claimants could form an association of land owners to provide a united front that is in line with the overall management.

## **8. Cultural heritage and development**

8.1 Cultural provisions with regard to heritage would be included in terms of the greater management plan and as per the agreement, e.g. visiting ancestral graves, collecting of herbs.

8.2 There should be recognition of the history of the area and its people, e.g. possible name changes of parks and/ or camps in terms of the communities who were removed.

8.3 Issues of development would be included in terms of the greater management plan and as per the agreement, e.g. establishing of a structure or museum.

8.4 There could be servitudes on museums and agricultural villages (depending on an environmental impact assessment).

8.5 Reconciliation and recognition of human dignity and cultural diversity – acceptance of the park as part of the community as opposed to it being a foreign tourist site.

## **9. Funds**

9.1 There should be buy-in from other state departments as per the nature of the specific case and the agreement reached in order to have a meaningful and sustainable package, this a collective responsibility.

9.2 The constitutional basis for cooperative governance should be made effective in the settlement of land claims in protected areas.

9.3 There should be real consideration and confirmation of cooperative governance where applicable and relevant for the holistic development of the broader community related to the claimant community.

9.4 The agreements could be in place, but if there is no relevant structures and contacts for support also in terms of funding afterwards, implementation could become very difficult. The function of the Commission does not cover the full scope of settlement and implementation.

9.5 There should be consideration of fundraising through public/ private enterprises.

9.6 Aspects of funding should be clearly spelt out in the agreements: e.g. a financial pay-out to claimants in lieu for restoration not feasible, a percentage of the annual gross turnover generated by commercial activities, certain portion of land excised for grazing purposes/ agriculture etc.

## **10. Mediation and arbitration**

10.1 The agreement shall allow for mediation and arbitration for disputes arising out of the agreement as per agreement amongst the parties.

10.2 This would include reference to action to be taken in terms of any breach of contract

Draft document

DLA

5 October 2001

Information used in compiling a cabinet memorandum to confirm as a joint position between Departments. Not yet approved.

## **APPENDIX 2**

### **SECTION 42D FRAMEWORK AGREEMENT FOR THE SETTLEMENT OF THE MABASO (SODWANA) RESTITUTION CLAIM IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT NO.22 OF 1994**

21/7/2001 Mabaso final

#### **ENTERED BETWEEN**

**MS THOKO ANGELA DIDIZA**

In her capacity as Minister responsible for Agriculture and Land Affairs

**MS P MLAMBO-NGCUKA: ACTING MINISTER OF PUBLIC WORKS**

Landowner

**THE DEPARTMENT OF WATER AFFAIRS AND FORESTRY**

**THE DEPARTMENT OF ENVIRONMENT AFFAIRS AND TOURISM**

**PROVINCIAL DEPARTMENT OF AGRICULTURE AND ENVIRONMENT AFFAIRS:  
KWAZULU-NATAL**

**PROVINCIAL DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM:  
KWAZULU-NATAL**

**GREATER ST. LUCIA WETLAND PARK AUTHORITY**

**KWA-ZULU NATAL NATURE CONSERVATION SERVICE**

**AND**

**MR MGQEBE NXUMALO**

he being duly authorised by Mabaso Initiative Land Committee and its Legal Successor  
(Hereinafter referred to as “the Claimant Community”)

**INKOSI JUSTICE NXUMALO**

he being duly authorised by Isizwe Sanwa Mabaso (Hereinafter referred to as “the ISIZWE” )  
Hereinafter referred to as “the parties”

#### **AGREEMENT**

##### **1. DEFINITIONS**

“**Act**” means the Restitution of Land Rights Act No. 22 of 1994 (as amended).

“**CRLR**” means the Commission on Restitution of Land Rights as stipulated under s25  
(6)(7)(8)(9) of the Constitution Act No.108 of 1996.

“**DLA** “ means the Department of Land Affairs as representing the State.

“**Claimed Land**” means the land from which rights in land were dispossessed and for which the claim was lodged against the State for the restoration of such rights in land, which Claimed Land is more fully described by reference to the map attached hereto, marked Annexure A.

“**Community**” means the Mabaso households that were directly dispossessed of their rights in land, whether registered or not, and the households in the vicinity of the Claimed Land who are under the same governance structure and share the same area cultural, social and economic needs.

**“Claimant Community”** means those members of the Mabaso community who were dispossessed of their rights in land in 1970s due to the forced removal of members of the community from the land, as well as their direct descendants, the members of which are more fully described in the list attached hereto, marked annexure B.

**“Beneficiary family”** means where the original dispossessed is deceased and there is more than one direct descendant (“direct descendant” shall have the same meaning as assigned in Section 1 of the Act, and therefore includes the spouse or customary law spouse/s of an original family head) who is entitled to benefit under this agreement, such family shall be referred to as beneficiary.

**“Restoration”** shall have the same meaning as the term “restoration of a right in land” as defines in Section 1 of the Act.

**“CPA” or “TRUST”** means a legal entity whose membership are those of the Mabaso community, as set out in Annexure B who were dispossessed of their rights in land in 1970s due to the forced removal who were dispossessed of their rights in land in 1970s due to the forced removal of members of this community from the land, as well as their direct descendants and upon the formation of the Mbaso Communal Property Association to be formed in terms of Section 8 of the Communal Property Association Act of No. 28 of 1996 or a Trust formed in terms of the Trust Property Control Act of 1998.

**“Deed of Grant”** the deed of grant to be given by the Minister of Public Works, in terms of which the Claimed Land is to be transferred to the Claimant Community, the conditions of title specifically related to the terms of this agreement shall be substantially in the form set out in 4.2.

**“Participation”** means having a say in and contribution to the developments taking place in the Claimed Land and benefiting from the revenue accruing from such developments; provided such participation takes place within the legislative consultative framework and the benefits do not undermine the financial integrity or sustainability of the GSLWP.

**“Consultation”** means having a say, direct or via consultation, within the legislative consultative framework and recognised structures in the manner in which assets and liabilities as well as governance parameters are organised and run in the interest of stakeholders owning or having vested interests in those assets or liabilities and the governance parameters.

**“Empowerment”** means the existence of the environment or conditions that enable persons in the community as well as the community as a whole, to have access to mental, cultural, social and economic information, skills and capabilities in order to see and understand opportunities, options and choices and be able to utilise those opportunities, options and choices in the best interest of themselves and the broader community of which they are part.

**“Biodiversity”** means natural resources including wild animal life, plant life, wetland habitats all interacting and co-existing with human life in a manner that sustain the long term existence of all.

**“Protected Area”** means a conservation site with land use restricted to preservation of, broadly, the biodiversity, which include wild animal life, plant life, wetland habitats all interacting and co-existing with human life as regulated and compelled by law to protect this co-existence for the term sustainability of the GSLWP.

**“Forestry Act”** means the Forestry Act No. 84 of 1998.

**“Marine Living Resources Act”** means the Marine Living Resources Act No. 18 of 1998.

**“RAMSAR Convention”** means the Convention on Wetlands of International Importance, signed in Iran on the 2nd of February of 1971, to which South Africa became a signatory on 12 March 1975 and as amended by the Protocol of 3rd December 1982, and the Amendments of the 29th May 1987.

**“Wetlands”** means one of the world’s unique forms of land use, restricted areas, defined as “Inhabiting a transitional zone between terrestrial and aquatic and influenced to varying degrees by both habitats.

**“World Heritage Sites”** are sites around the world inscribed on the World Heritage Register pursuant to the World Heritage Convention Act of 1972, due to their cultural and/or natural significance.

**“WHC Act”** means the World Heritage Convention Act No. 49 of 1999.

**“WHC Regulations”** means the regulations and notices under the WHC Act in connection with the GSLWP.

**“GSLWP”** means the Greater St Lucia Wetland Park, a World Heritage Site, established under the WHC Act and the WHC Regulations.

**“Authority”** means the Greater St Lucia Wetland Park Authority, established in terms of the World Heritage Convention Act No. 49 of 1999.

**“NEMA”** means the National Environment Management Act No. 107 of 1998.

**“IDMP”** or **“Integrated Development Management Plan”** means the Integrated Development Management Plan in terms of chapter IV of the WHC Act.

**“Minerals Act”** means the Minerals Act No. 51 of 1991 as amended or substituted by any other Act.

**“KwaZulu-Natal Nature Conservation Management Act”** means the Nature Conservation Act No. 9 of 1997.

**“NCS”** means the KwaZulu-Natal Nature Conservation Service as defined in the Nature Conservation Management Act No. 9 of 1997.

**“NCB”** means the KwaZulu-Natal Nature Conservation Board, as defined in the Nature Conservation Management Act No. 9 of 1997.

**“Commercial Activities”** means, subject to the provisions of the NCS and Authority Management Agreement, all activities which are capable of being conducted within or in connection with the Claimed Land and are of an income producing or commercial nature; and which shall include, but not be limited to tourism; provided that such activities are associated with or promote the conservation of the Claimed Land and:

- (a) do not cause the natural permanent destruction of renewable or nonrenewable resources within the Claimed Land other than as permitted in the management Agreement or the IDMP; and
- (b) where applicable have been approved by the competent authority after an environmental impact assessment, as required by law;

## **BACKGROUND TO THE CLAIM**

### **2 WHEREAS**

2.1 The rights lost were those of (unregistered) beneficial occupation rights as contemplated in the definition of “rights in land” in Section 1 of the Act, in the area situated in a portion of the Sodwana State Forest situated on the Mkuze river on the South and the Muzi pan on the West and cut line of the Sodwana State Forest in the Ubombo district of KZN, being the Claimed Land.

2.2 A claim was lodged on the 21 February 1995 for the restitution of rights in land with the RLCC: KZN in terms of the Act, by Mr. VB Ntuli (subsequently replaced by Mr. M Nxumalo) as in his capacity as chairperson of the Mbaso Initiative Land Committee.

2.3 The Claimant Community is a community as contemplated in Section 1 of the Act and as further contemplated in Section 2(1)(d) read with Section 10 of the Act.

2.4 The RLCC is satisfied that the claim meets the requirements of Section 11(1) of the Act, and caused notice of the claims to be published in Government Gazette No. 17482 of 11 October 1996.

2.5 The Claimant Community has a right to restitution of rights in land because:

2.5.1 The Claimant Community was dispossessed of unregistered rights of beneficial occupation as contemplated in the definition of “right in land” in Section 1 of the Act, on the historic land parcel which constitutes the Claimed Land;

2.5.2 The Claimant Community lost these rights as a result of racially discriminatory laws and practices as contemplated in Section 2(1)(a) of the Act;

- 2.5.3 The dispossession was effected during the period from 1974 until 1979; and
- 2.5.4 The State accepts that the Claimant Community received no compensation at the time of dispossession.
- 2.6 The total extent of the Mbaso claim is approximately 3 500 hectares and is valued at R 8 750 000.
- 2.7 Ownership of the Claimed Land currently vests in the Republic of South Africa, Department of Public Works.

### **3 THE PREMISE**

3.1 The rights dispossessed are those of beneficial occupation as contemplated in the definition of “rights in land” in Section (1) of the Act. The restoration of the dispossessed rights in land WITHOUT PHYSICAL OCCUPATION of the Claimed Land is feasible under the following restrictive conditions:

3.1.1 The Claimed Land shall remain a CONSERVATION AREA IN PERPETUITY in terms of the prevailing national conservation legislation and the World Heritage Convention Act No. 49 of 1999;

3.1.2 The restoration of the rights in land is feasible through the transfer of title to the Claimed Land coupled with registered NOTARIAL DEEDS containing restrictions to the effect that the Claimed Land has to be used in compliance with the prevailing Conservation, Forestry and World Heritage Convention Acts and the RAMSAR CONVENTION;

3.1.3 Management of the BIODIVERSITY in and to the Claimed Land shall be vested with the GSLWP Authority and through it with the NCS and must be managed in terms of the WHC Act and WHC Regulations;

3.1.4 The creation and promotion of a sustainable, conducive environment for overall ECONOMIC DEVELOPMENT and INVESTMENT as well as conditions for sustained GROSS POVERTY EDUCATION as national priorities are upheld. This includes community PARTICIPATION and REAL EMPOWERMENT.

3.2 The State and the Claimant Community record that it is possible for the Claimant Community to own land proclaimed as a protected area without physically occupying it. The State therefore wishes to effect restoration of the dispossessed rights in land in the Claimed Land in such a manner as to restore ownership as part of the broader land reform objectives of the Department of Land Affairs in a manner that is consistent with South Africa’s obligations under the current Conservation, World Heritage and Forestry Acts and subsequent legislation.

### **NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:**

#### **4 GRANTING OF TITLE**

4.1 The parties agree that the restitution of the dispossessed rights in land shall be restored to the Claimant Community through the transfer of title of the Claimed Land to the CPA or Trust subject to the Claimed Land being used solely for the purpose of nature conservation and associated commercial activities.

4.2 The Claimant Community, through the CPA to be established to hold title to the Claimed Land, shall not sell or otherwise dispose of, alienate, exchange, transfer, donate any portion of the Claimed Land to any person or institution, mortgage or encumber the title in any way.

4.3 The parties agree that the necessary title deed endorsement and/or notarial deeds are registered with the Registrar of Deeds, in order to give effect to clause 3 of this agreement.

#### **5 CONDITIONS OF USE**

The parties agree and stipulate that the transfer of ownership of the Claimed Land as stated above shall be subject to the following conditions:

5.1 The parties agree that the Claimant Community shall acquire ownership of the Claimed Land without physically occupying it, as stipulated in clause 3.

5.2 The Claimed Land shall remain solely for the purposes of conservation and associated commercial activities.

5.3 Any development of whatsoever nature including without limitation to commercial projects, tourism facilities and infrastructure, shall be subject to the provisions of the WHC Act and the IDMP prepared in terms thereof and the appropriate Environmental Impact Assessment legislation.

## **6 LEGAL ENTITY**

It is a condition precedent to this agreement that the Claimant Community must establish and register a legal entity through the Department of Land Affairs in the form of a Communal Property Association (“CPA”), within twelve 12 months of the signing of this agreement for the purpose of taking transfer of title in and to the Claimed Land.

## **7 MINERAL RIGHTS**

7.1 The mineral rights (as defined in the Mineral Act 50 of 1991 as may be amended or any subsequent law which amends or substitutes the said Act) in respect of the Claimed Land shall remain vested with the State, subject to the international laws and regulations governing World Heritage Sites as defined and promulgated by the WHC Act.

7.2 No mining and/or prospecting activities shall take place in or under the Claimed Land, including excavation of sand, stone, rock, gravel, clay and soil, except for the purposes fulfilling nature conservation management obligations in terms of the WHC Act.

7.3 In the events the State should wish to divest itself of the mineral rights referred to in paragraph 7.1 or wish to grant any prospecting or mining rights in of the said act or legislation in respect of the Claimed Land, the Claimant Community shall seek to negotiate with the state for first offer of mineral rights or granting of prospecting or mining rights in respect of the Claimed Land to the Claimant Community at a fair and reasonable price.

## **8 MANAGEMENT OF THE CLAIMED LAND**

8.1 The Claimed Land is part of a PROTECTED AREA of the GREATER ST LUCIA WETLAND PARK (GSLWP) and the management of the Claimed Land shall be subjected to the overall management of a protected area within the GSLWP as a World Heritage Site in accordance to the Environment Conservation Act and WHC Act. It is mutually recognised and acknowledge that the GSLWP Authority has been appointed to oversee and regulate the GSLWP, as a whole and is responsible for the management of the Conservation and economic development and investment in the GSLWP. The State remains overall protector and regulator of the biodiversity integrity as well as the provincial economic development priorities.

8.2 The parties further agree that the principle of genuine and proper consultation of the landowners and the broader communities in the vicinity of the GSLWP shall apply at all times. Due to the diverse land ownership of the protected area in the World Heritage Site the parties recognise that land owners will, subject to the provisions of the IDMP, be represented on the Management and Consultative structures and processes stipulated by the WHC Act. These structures are the Greater St. Lucia

Wetland Park Authority and the Park Councils for the three management blocks of the Park. It is also noted that specific committees will consult and devise strategies for issues of a local nature such as resource utilisation and access to the protected area.

8.3 The parties acknowledge that certain subsidiary or operational management plans within the framework of the IDMP will be prepared according to the principles and policies of a World Heritage Site and the prevailing legislation. The components of such subsidiary or operational management plans, as required in terms of the IDMP, shall include the following; administrative, conservation and tourism development sections and a component dealing with a plan for genuine empowerment land owners (including participation, capacity development and empowerment



plans) and communities adjacent to the protected area. The subsidiary plans shall specifically spell out the management goals, programmes and implementations strategies. This needs to be based on the principles of environmental, social and economic sustainability. The parties further acknowledge that the GSLWP shall be managed in a manner that achieves the protection and upholding of the integrity of the biodiversity, promotion of economic development and investment and to provide equitable benefits to the landowners based on the principles of sustainability of the biodiversity and sustainable utilisation of the Claimed Land.

#### **8.4 THE MANAGEMENT OF THE BIODIVERSITY, ECONOMIC DEVELOPMENT AND INVESTMENT**

8.4.1 The parties further record that the GSLWP Authority has been appointed by the State as the regulatory and management authority of the Claimed Land as part of the GSLWP in terms of the WHC Act, and the GSLWP Authority or its successor, as appointed, shall continue to perform its regulatory and management mandate, notwithstanding transfer of title in the Claimed Land.

8.4.2 The parties acknowledge and record that the NCS (Ezemvelo KZN Wildlife) or its legal or contractual successor is responsible for the ongoing conservation of biodiversity in the GSLWP of which the Claimed Land is part.

8.4.3 The parties recognise and agree that the Greater St Lucia Wetland Park Authority is responsible for the investment, marketing and commercial development of the GSLWP of which the Claimed Land is part.

8.5 It is understood by the parties that one of the core objectives and legal obligations of the GSLWPA is to maximize cost recovery to a point where the Park becomes financially self-sustainable. To facilitate this, all commercial use of the land will be subject to a levy administered by the GSLWPA. Income generated in this manner will be used to cover the development and management costs related to the land. Eight percent (8 %) of the annual gross turnover (excluding vat) generated by the operation by the Authority of commercial activities on the claimed land shall be paid to the CPA or Trust.

### **9 COMMUNITY EMPOWERMENT**

9.1 It is a long term objective that the economic, management and social empowerment of the Claimant Community as well as the broader communities in the vicinity of the Claimed Land is achieved through the process of restitution of land rights. This is in line with the overall National objective of sustainable economic development, reduction of poverty, transfer of strategic skills as well as sustainable employment creation.

9.2 The parties recognise and agree that the Claimant Community as owners of the Claimed Land as an economic asset, together with the State, the Authority and Investors have an interest in the economic benefits accruing from the current and future economic developments on the Claimed Land.

9.3 The Authority, as required by law and employment equity requirements shall structure tender adjudication requirements for the award of commercial opportunities on land owned by the Claimant Community in a way that favours proposals involving the Claimant Community by way of share equity or other partnerships.

9.4 The CPA or Trust as may be appropriate shall form and register a public company within 6 months of the signing of this agreement, as an instrument for participation in joint ventures, business partnerships, ancillary businesses aligned to commercial activities as defined, in the park and any other businesses aligned to 8.4.1 and 8.5.2, as business environment may so allow. It is recognised by the parties that the CPA Trust reserves the right, subject to tender and market prices, to enter into commercially based lease agreements with the Authority on development sites on the Claimed Land. These agreements shall be negotiated by the parties and subject to review within a time frame agreed on by the two parties. Further to the above the parties record and agree that the Claimant Community

reserves the right to purchase equity in game or other assets in the Claimed Land.

#### **10 GREATER ST LUCIA WETLAND PARK LAND OWNERS ASSOCIATION**

10.1 The parties record and agree that the Claimant Community, as owners of the Claimed Land, through the CPA shall form an association with other land claimants in the GSLWP within 24 months of the signing of this agreement. In the interim, the existing land claim committees shall be the recognised community issues dealing with the issues related to land claims. The Claimant Community association shall be a member of the wider GSLWP land owners association to be formed as soon as possible after the signing of the agreement.

10.2 The purpose of this Association shall be to provide a co-ordinated and unitary landowners structure to enable effective representation on the GSLWP governance structure, provision for conducive investment and economic development, cooperative environmental management, monitoring of the effective implementation of principles embedded in this agreement as well as co-ordinated interaction with other stakeholders and parties with interests in the GSLWP.

#### **11 CULTURAL PROVISIONS**

The parties agree that the Mabaso legal entity shall establish a memorial structure or museum which shall depict the history of Mabaso as *isizwe*, the history of their forced removals as well as depicting the names of those who were removed shall be erected in an appropriate place adding value to tourist attraction as well as preservation of cultural heritage. The parties acknowledge that burial sites within the Claimed Land have a cultural and religious significance to the Claimant Community and that reasonable orderly access to these sites will not be denied by the Authority or its legal successor. It is further noted that the practise of burying late Amakhosi at sacred sites is acknowledged and that the need to afford these sites special protection is noted by the Authority.

#### **12 DEVELOPMENT FUNDS**

The State undertakes to do everything in its powers on a co-operative basis to elicit the commitment and support of other departments at national, provincial and local spheres for the integrated development plan to the land claimed aligned to the applicable Conservation laws, GSLWP and IDMP and the adjacent area outside the land claimed for the holistic development of the broader community related to the Claimant Community.

##### **12.1 PART COMPENSATION**

The Department of Land Affairs will make payment to the CPA of an amount of R 5 833 645 Rands. This payment constitutes part compensation for real potential income loss from traditional cultivation land, actual grazing land and excludes all other historical rights and uses of the land by reason of the fact that the Claimant Community will not take physical occupation of the Claimed Land, and that it thereby preserves the status of the Claimed Land as a protected conservation area in perpetuity. The portion of the Sodwana State Forest has been valued at an amount of R 8 750 000 Rands. The part compensation payable in terms of this clause, to be utilised for development of the Claimant Community and the Claimed Land, will be based upon the value of R 8 750 000 Rands.

##### **12.2 PLANNING AND DEVELOPMENTAL GRANTS**

That the Department of Land Affairs approves the Restitution Discretionary grant (RDG) and Settlement Planning grant (SPG) of 200 households for Mabaso community in the amounts of R 3000,00 and R 1 440 per household respectively. These grants will in total amount to the sum of Eight Hundred and Eighty Eight Thousand (R 888 000), and will be paid to the CPA to be utilised for settlement planning, game start-up equity and settlement projects for the Claimant Community in and around the Claimed Land for tourism and aligned purposes.

##### **12.3 SOLATIUM**

A solatium of R5 000 per claimant household shall be awarded by the State as a symbolic reparation for mental suffering and non-financial loss endured at the time of forced removals. The state has taken into consideration that no amount of money would ever fully compensate a person for the suffering caused by forced removals under racial discriminatory laws and practice and that this award is therefore only symbolic. The overall solatium for Mabaso land claim is One Million Rand Only (R1 000 000) [s33 (b) (d) of Act 22 of 1994 as amended]

### **13 EFFECTIVE DATE**

13.1 This Agreement shall come into force and effect on the signature date, which shall be known as the effective date.

13.2 Pending transfer of the claimed area in terms of the clause 4 above, the terms of this agreement, to the extent possible, shall come into force and effect in all respects as if such transfer had taken place.

### **14 RESIDUAL POWERS OF THE STATE**

The State shall retain the residual power to ensure that the Claimed land remains protected in perpetuity as a National Protected Area, in accordance with the Environmental Conservation Act 73 of 1989, the National Forestry Act, the WHC Act and the Ramsar Convention. In addition the State shall ensure that the conditions of use referred to in clause 5 above are recorded and effected against the title deeds of the Claimed Land.

### **15 FINALISATION OF THIS AGREEMENT**

The parties agree to have this restitution matter finalised in terms of this agreement formulated in terms of Section 42 D of the Restitution of Land Rights Act 22 of 1994.

### **16 AMENDMENT**

This agreement is the sole record of the agreement between the parties. Any amendment hereto shall not be in force and with effect unless reduced to writing and signed by all parties.

### **17 FULL AND FINAL SETTLEMENT**

The parties hereby confirm that this agreement is in full and final settlement of the Claimant Community's claim in terms of the Act. A list of the original members of the Claimant Community, who were removed from a portion of the Sodwana State Forest, or their descendants, is attached to this agreement. This reflects the total number of beneficiaries families, less outstanding families, who shall benefit from the agreement as members of the Claimant Community, and the representative family member/s in each case - Annexure B.

### **18 INDEMNITY**

18.1 The Claimant Community indemnifies the State, against any loss, liability, damage or expense which may be suffered by the State, pursuant to any claim made in respect of the land claimed by any person who proved to be a member of the Claimant Community and/or a beneficiary family, and who has been excluded from this Agreement.

18.2 The parties record that this Agreement constitutes the entire agreement between the parties for the purpose of settlement of all claims by the Claimant Community in connection with the Claimed Land, and that its provisions are accepted in full and final settlement of any land claim which may arise against the State in respect of the Claimed Land.

18.3 This Agreement as well as the Annexures attached constitutes the sole agreement between the parties and no variation shall be of any force unless in writing and endorsed hereon and signed by the Parties to this Agreement.

## **19 MEDIATION AND ARBITRATION**

19.1 All disputes arising from this agreement shall be settled by way of mediation by a mutually agreed upon accredited and professional mediator.

19.2 In the event that mediation fails, the President of the Natal Law Society in consultation with the State Attorney of KwaZulu-Natal shall, in accordance with the law of the Republic of South Africa and pursuant to the provisions of the Arbitration Act No. 42 of 1965, be requested to appoint the arbitrator. The arbitrator shall be a practising attorney of at least ten (10) years experience whose identity is mutually agreed by both parties. Such arbitration shall be held at a venue to be agreed between the parties.

19.3 The costs of mediation and arbitration shall be borne equally by the parties to the dispute unless otherwise agreed.

## **20 SUSPENSIVE CONDITION**

This Agreement is subject to the suspensive condition that the Minister of Land Affairs approves and ratifies this Agreement and the making of an award in accordance with this Agreement in terms of section 42D of the Act, which approval and ratification the Minister shall indicate either at the time of signature of this Agreement by the parties or as soon thereafter as is reasonably possible.

20.1 This agreement shall be valid and effective upon signing notwithstanding the stipulation in clause 6 as well as to give effect to clause 13 of this agreement.

## **21 DOMICILIUM**

The parties choose the following addresses as their *domicilium citandi et executandi* for all purposes, including delivery of notices and serving of paper namely:

THE STATE:

C/o The Director General

The Department of Land Affairs

2nd Floor 184 Jacob Mare Street: Pretoria, 0001

LAND OWNER

C/o Director General

Department of Public Works

Central Government Offices: Corner Bosman & Vermuelen

P/B X65 PRETORIA 0001

THE LAND CLAIMANTS:

Mr MGQEBA NXUMALO

C/o P.O. Box 99 Mbazwane 3974

**THUS DONE AND SIGNED AT SODWANA ON THIS DAY OF \_\_\_\_\_ 2001.**

**MS T. A. MSANE-DIDIZA: MINISTER OF AGRICULTURE AND LAND AFFAIRS**

*who warrants his/her authority hereto*

Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_

**MS P NGCUKA : ACTING MINISTER : DEPARTMENT OF PUBLIC WORKS**

*who warrants his/her authority hereto*

Witnessed By:

\_\_\_\_\_

\_\_\_\_\_  
**MGQEBA NXUMALO:** Chairman: for and on behalf of the claimants  
*Who warrants his/her authority hereto*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**INKOSI NJ NXUMALO** (Inkosi YeSizwe SakwaMabaso)  
*(Who warrants his/her authority hereto)*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**Mr Mike Muller: Director General**  
**DEPARTMENT OF WATER AFFAIRS AND FORESTRY**  
*Who warrants his/her authority hereto*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**Ms Maria Mbengashe : Chief Director: Biodiversity and Heritage**  
**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM**  
*Who warrants his/her authority hereto*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**Mr Khulani Mkhize : CEO KZN WILDLIFE for**  
**PROVINCIAL DEPARTMENT OF AGRICULTURE AND ENVIRONMENTAL**  
**AFFAIRS:**  
**KWAZULU-NATAL**  
*who warrants his/her authority hereto*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**DEPARTMENT OF ECONOMIC DEVELOPMENT AND TOURISM: KWAZULU-**  
**NATAL**  
*who warrants his/her authority hereto*  
Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_  
**Mr Andrew Zaloumis : CEO**  
**GREATER ST. LUCIA WETLAND PARK AUTHORITY**  
*who warrants his/her authority hereto*  
Witnessed By:

**KWAZULU-NATAL NATURE CONSERVATION SERVICE**

*who warrants his/her authority hereto*

Witnessed By:

\_\_\_\_\_  
\_\_\_\_\_